IN THE

Supreme Court of the United States

October Term, 1976

No. 76-1184

E. I. MALONE, Commissioner of Labor and Industry for the State of Minnesota,

Appellant,

vs.

WHITE MOTOR CORPORATION and WHITE FARM EQUIPMENT COMPANY,

Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

JURISDICTIONAL STATEMENT

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No.

E. I. MALONE, Commissioner of Labor and Industry for the State of Minnesota,

Appellant,

vs.

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Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

JURISDICTIONAL STATEMENT

Appellant appeals from the judgment of the United States Eighth Circuit Court of Appeals entered on December 2, 1976, reversing the judgment of the District Court for the District of Minnesota and ruling that the National Labor Relations Act preempts the Minnesota Private Pension Benefits Protection Act.[1] The appellant submits this statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that substantial federal questions are presented.

[1]Minn. Stat. §§181B.01-17 (1974).

THE OPINIONS BELOW

The opinion of the Eighth Circuit Court of Appeals is reported at 545 F. 2d 599 (1976) and the opinion of the District Court for the District of Minnesota is reported at 412 F. Supp. 372 (1976). The text of these opinions is set forth in Appendices A and B, respectively, A. 1 and A. 26.

JURISDICTION

This action was initiated by the appellees in the United States District Court for the District of Minnesota pursuant to 28 U.S.C. §§1331, 1332 and 2201-2202 for a declaratory judgment that the Minnesota Private Pension Benefits Protection Act, Minn. Stat. §181B.01-17 (1974) (hereinafter Minnesota Pension Act) is preempted by the National Labor Relations Act, 29 U.S.C. §151 *et seq.* (hereinafter NLRA).

The appellees, relying solely on the preemption issue, also moved for a preliminary injunction and on March 18, 1976, the district court entered an order ruling that the Minnesota Pension Act was not preempted by the NLRA and denying appellee's motion for a preliminary injunction. On December 2, 1976, the United States Court of Appeals for the Eighth Circuit reversed the District Court and ruled that the Minnesota Pension Act was preempted by the NLRA. A notice of appeal to this Court was filed on December 7, 1976, with the Eighth Circuit Court of Appeals. The jurisdiction of this Court to review the decision of the Court of Appeals is conferred by 28 U.S.C. §1254(2).

STATUTE INVOLVED

The full text of the Minnesota Pension Act, Minn. Stat. §181B.01-17 (1974) is set forth in Appendix D, A. 49.

QUESTION PRESENTED

The Minnesota Pension Act protects Minnesota workers from the forfeiture of their promised pension benefits when a plant is closed or a private pension plan is terminated. The question presented is whether the court of appeals erred in reversing the district court and ruling that the Minnesota Pension Act was preempted by the NLRA.[2]

STATEMENT OF THE CASE

The Minneapolis-Moline Company, a farm implement manufacturer, operated plants in Minneapolis and Hopkins, Minnesota for many years. A pension plan for the hourly unionized workers had been in existence since 1950. Appellees purchased the Minneapolis-Moline Company in January, 1963, and became the successor employer to the pension plan. Appellees operated the two plants for nine and one-half years.

In January, 1972, appellees advised the employees that they were closing both plants. At that time there were over 1,000 hourly workers at the two plants. On June 3, 1972, appellees announced that the pension plan was severely underfunded and that there was a net deficiency

[2]The federal protection for retirees and pension plan participants afforded by the Employee Retirement Income Security Act, 29 U.S.C. §§1001 *et seq.* (ERISA) did not go into effect until after appellees' May 1, 1974, termination of their pension plan. Therefore, only the Minnesota Pension Act provides protection to these participants in appellees' pension plan who lost substantial retirement benefits because of the plan's termination.

in the fund of some fourteen and one-half million dollars when the fund was measured against the present value of the pension benefits promised.[3]

Appellees further announced that when the pension plan was terminated, pension benefit payments would immediately be reduced to the level of benefits set forth by appellees in a March, 1972 "Guarantee Letter" and that supplemental pension benefits owing to employees who had opted for early retirement would no longer be paid. This "Guarantee Letter" effectively reduced the level of benefits promised in the pension plan by approximately 60 percent. The reduced benefits would be paid from the pension fund until it was exhausted and thereafter directly from appellees' company funds. The pension plan had previously provided for a 35-year amortization period for any unfunded past service liability.

On June 30, 1972, the Lake Street plant in Minneapolis, the larger of the two plants, was closed although the Hopkins plant, with over 200 workers, was kept open. Also on June 30, 1972, appellees attempted to terminate the pension plan for their hourly employees at both plants and ceased paying regular monthly pension benefits, as well as supplemental benefits where applicable, and paid benefits only to the extent required under their "Guarantee Letter." This initial attempt to terminate the pension plan failed because it was held in an arbitration between the union representing the hourly employees and appellees that the plan could not be terminated until May 1, 1974, when the governing collective bargaining agreement was to expire.[4]

[3]Hearings on Private Welfare and Pension Plans, Before the Subcommittee on Labor of the Senate Committee on Labor and Public Welfare, 92d Cong., 2d Sess. 736 (June 3, 1972) (hereinafter the "Mondale Hearing"). A copy of this Hearing was lodged with the district court.

This award to the union was upheld in subsequent litigation initiated by appellees challenging the award. *U.A.W. v. White Motor Corp.*, 505 F. 2d 1193 (8th Cir. 1974), *cert. denied*, 421 U.S. 921 (1975).

Pursuant to the arbitration award, the appellees were not only prohibited from terminating the pension plan until May 1, 1974, but were also required to pay full benefits out of the regular pension fund until it was exhausted. Thus, after having their benefits substantially reduced for a little more than a year while litigation ensued, the nearly 1,000 retirees again received benefits under the pension plan rather than the reduced amount set forth in the "Guarantee Letter" until the regular pension fund became insufficient to pay those benefits in March, 1976. On April 1, 1976, the retirees' benefits were again reduced to the level of benefits provided by the "Guarantee Letter," and those retirees are now living on approximately 40 percent of the benefits promised under the 1971 pension plan.[5]

At the time of the closing of the Lake Street plant in 1972, the majority of the employees were between the ages of 45 and 64. Some current retirees had worked at appellees' plants for as long as 40 years and many employees retired after as long as 25 to 40 years of employment. Often other job opportunities were refused because employees did not want to lose the pension benefits they were supposed to be accruing during those years of employment.[6] Thus, over the years appellees and their predecessor had developed a loyal and productive work force. At

[4]White Motor Corp. and U.A.W., 61 Lab. Arb. 320, 328, 331 (1973) (Seitz, Arbitrator).
[5]*See* Mondale Hearing at 783.
[6]*See* Retirees Affidavits, Eighth Circuit Appendix at 46-83.

least part of this loyalty and productivity was due to the appellees promise of reasonable retirement benefits.[7]

The Minnesota Pension Act became effective on April 10, 1974, shortly before appellees terminated the pension plan. It is directed at two historically typical methods by which employers avoid the payment of retirement benefits allegedly assured by private pension plans: (a) the mass termination of employees who have participated for a reasonable number of years in their employer's pension plan before their pension benefits have vested under the plan and (b) the termination of pension plans inadequately funded to provide the retirement benefits the retired employees expected from the plan. The Minnesota Pension Act, which is administered by appellant, protects Minnesota employees with ten or more years of covered service under a pension plan from the forfeiture of pension benefits resulting from either method of avoiding the payment of pension benefits.

That protection is afforded by requiring a Minnesota employer who ceases to operate a place of employment in Minnesota or terminates a pension plan to pay a pension funding charge if either such action results in the forfeiture of pension benefits. Minn. Stat. §§181B.03-04 (1974). The pension funding charge is used to purchase annunities that will provide the protected employees with the promised monthly pension payments on reaching retirement age. Minn. Stat. §181B.12 (1974). The benefit provided by the annuity must be equal to that portion of the employee's normal retirement benefit, as defined in the pension plan, that accrued during his years of covered service under the plan.

[7] *Id.*

Following receipt of notice from appellees in April, 1974, of their intent to terminate the pension plan effective May 1, 1974, appellant, pursuant to his statutory duties, commenced an investigation to determine the extent of the forfeiture of pension benefits that would result and the corresponding obligation, if any, of appellees to pay a pension funding charge under the Minnesota Pension Act. On May 15, 1975, appellees filed the instant action in the District Court for the District of Minnesota seeking a declaration that the Minnesota Pension Act was unconstitutional. Thereafter, on August 18, 1975, appellant notified appellees of the assessment of a pension funding charge and therein afforded appellees an opportunity to request a hearing concerning, *inter alia*, the amount and method of satisfaction of that charge. Appellees did request a hearing and subsequently moved for summary judgment in federal district court on the preemption issue and for an injunction against the state administrative proceedings. The District Court, (Alsop, J.), denied appellees summary judgment and declined to issue an injunction. The court ruled that the Minnesota Pension Act did not conflict with the NLRA and federal labor policy and further held that Congress had indicated its intent to leave the regulation of pension matters to the individual states. The Court of Appeals, in reversing the district court, held that this Court's decisions in *Lodge 76, Machinists v. Wisconsin Employment Relations Comm.*, — U.S. —, 96 S.Ct. 2548 (1976) and *Local 24, Teamsters v. Oliver*, 358 U.S. 283 (1959) required a finding by the court of preemption of the Minnesota Pension Act by the NLRA.

THE QUESTIONS ARE SUBSTANTIAL

In reversing the District Court and invalidating the Minnesota Pension Act, the Court of Appeals construed this Court's labor preemption decisions in such a broad and expansive fashion so as to virtually preclude any state legislation in areas which only tangentially relate to specific provisions in collective bargaining agreements. The Court of Appeals' decision represents an unwarranted intrusion by the federal judiciary into areas previously believed to be within the scope of state authority and exhibits a basic lack of concern for the principles of federalism and federal-state comity.

1. This Court's Established Judicial Tests For Labor Preemption Do Not Warrant Invalidation Of The Minnesota Pension Act.

The Minnesota Pension Act simply does not create the type of conflict with national labor policy that this Court has determined warrants preemption. Examination of those judicially-established tests for NLRA preemption, in the context of the conduct regulated by the Minnesota Pension Act, leads to the unavoidable conclusion that the Minnesota law should not fail before the national labor policy.

a. The Minnesota Pension Act Is Not Preempted Because It Does Not Regulate The Conduct Of Parties Engaged In The Collective Bargaining Process Nor Affect The Bargaining Process.

A primary objective of Congress in enacting the NLRA was to establish a mechanism and framework within which labor-management relations could proceed peacefully and with a minimum of economic disruption. *See* 29 U.S.C. §151. The mechanism relied upon was the collective bargaining process as regulated and protected by the NLRA. Much of Congressional labor policy and, correspondingly, the provisions of the NLRA are, therefore, directed primarily to the relations and conduct of labor and management while engaged in that process. Just as the major thrust of the NLRA was directed at the conduct of parties engaged in the collective bargaining process itself, it follows naturally that the primary thrust of preemption by the NLRA of state laws involves state regulation directed at the conduct of parties engaged in collective bargaining.

In furtherance of the Congressional goal of establishing and protecting effective and equitable collective bargaining, Congress identified in sections 7 and 8 of the NLRA, certain conduct of employees and employers that is protected from interference and other conduct that is prohibited as unfair labor practices. In order to preserve the integrity of this fundamental aspect of national labor policy, this Court formulated the *Garmon* rule of preemption, explaining that:

> To leave the States free to regulate conduct *so plainly within the central aim of federal regulation* involves too great a danger of conflict between power asserted by Congress and requirements imposed by state law.

San Diego Building Trades Council v. Garmon, 395 U.S. 236, 244 (1959) (emphasis added). This standard was reiterated in *Amalgamated Ass'n. of Street Employees v. Lockridge*, 403 U.S. 274 (1971).

Although the Court of Appeals asserted that the Min-

nesota Pension Act alters the collective bargaining process, the activity that the Pension Act in fact regulates is not the negotiation of the terms of a pension plan but rather an employer's cessation of the operation of a place of employment or a pension plan, resulting in the forfeiture of accrued pension credits. Even a cursory reading of Section 7 and 8 of the NLRA, 29 U.S.C. §§157-58, reveals that such actions are neither protected activities nor prohibited unfair labor practices. Indeed, such activities cannot reasonably be said to comprise any part of the collective bargaining process that is the subject of the NLRA, and are therefore *not*, in the language of *Garmon*, "within the central aim of federal regulation."

This is particularly true when it is recognized that the Minnesota Pension Act comes into play only when there is a termination of a substantial number of employees or the termination of a pension plan, and even then there is a further requirement that such a termination result in a forfeiture of accrued pension credits before the Minnesota Pension Act can apply.

b. The Minnesota Pension Act Is Not Preempted By The Doctrine Of Local 24, Teamsters v. Oliver

The Eighth Circuit relied heavily on *Local 24, Teamsters v. Oliver*, 358 U.S. 283 (1959) in reversing the district court and holding that "[t]he Minnesota Pension Act directly intrudes upon the employer's substantive obligations under the pension plan . . . ." 545 F. 2d at 604. In *Oliver*, the state courts had held that an Ohio antitrust statute rendered invalid part of a collective bargaining agreement that established minimum rentals to be paid for

trucks leased to a trucking company when the owner drove the truck as an employee of the company. Thus, the effect of the state antitrust law was to absolutely prohibit bargaining on a mandatory subject of collective bargaining. This Court reversed the state court, holding that the Ohio antitrust statute could not be applied to prohibit the effectuation of the parties' agreement concerning a subject of mandatory bargaining under the NLRA.[8]

Although the court of appeals did not seek to analyze *Oliver*, it made clear its belief that the situation in *Oliver* was directly on point with the instant case. The court thus overlooked three fundamental, yet obvious, distinctions between the Ohio antitrust statute preempted in *Oliver* and the Minnesota Pension Act, distinctions which indicate that the nature and degree of conflict that existed between the state regulation and federal labor policy in *Oliver* are plainly not presented by the Minnesota Pension Act.

First, and most significantly, the effect of the Ohio antitrust statute in *Oliver* was to impose an *absolute prohibition* on inclusion of certain substantive terms that the parties had agreed upon in the collective bargaining agreement. Indeed, any agreement between the parties establishing minimum rentals for the driver-owned trucks would have been precluded by the Ohio law. Although the NLRA is ordinarily not concerned with the substance of collectively-bargained agreements,[9] the effect of the Ohio statute was to *absolutely preclude* negotiation and agreement

[8]This Court had first determined that the rental provisions of the agreement were so related to the wage provisions that they were a mandatory subject of collective bargaining.
[9]H. K. Porter Co. v. N.L.R.B., 397 U.S. 99 (1970).

on a mandatory subject of collective bargaining.[10] Additionally, because the state antitrust law effectively prevented inclusion of the terms in the agreement, not only the bargaining process but also the ongoing employer-employee relationship during the life of the agreement was affected. It was such a direct conflict that prompted this Court to find in *Oliver* that preemption was required.

In contrast, the Minnesota Pension Act does not purport to dictate the substantive terms of pension plans or to restrict the scope of the terms of agreement that the parties may reach in collective bargaining concerning pension plans. Nor does the Minnesota Pension Act intrude into the ongoing employer-employee relationship by preventing the effectuation of the terms of an ongoing collectively-bargained pension plan. In fact, the Minnesota Pension Act cannot even apply to a situation in which both the employment relationship and the pension plan remain in effect. Rather, the Minnesota Pension Act comes into play only when there is a termination of a pension plan or when the employees covered by such a plan are discharged. Indeed, there is a further requirement that such termination results in a forfeiture of accrued pension credits before the Minnesota Pension Act can apply. Thus, the Minnesota Pension Act affects only the *dissolution* of pension rights resulting from the termination of a pension plan or the employment relationship of covered employees. That is not the type of substantive regulation of a collectively-

[10]The fact that the Ohio law vitiated a contract term dealing with a mandatory subject of collective bargaining was critical in Oliver. Local 24, Teamsters v. Oliver, *supra*, 358 U.S. at 295. While pension benefits for active employees are a mandatory subject, bargaining concerning retiree benefits has been held not to be mandatory. Allied Chemical & Alkali Workers of America, Local 1 v. Pittsburgh Plate Glass Co., 404 U.S. 157 (1971).

bargained agreement that was preempted in *Oliver;* the parties here are not prevented from "carrying out their agreement" on a mandatory subject of collective bargaining in the sense that the parties in *Oliver* were. *Cf. Thacher v. United Construction Workers,* 10 N.Y. 2d 439, 180 N.E. 2d 245, 224 N.Y.S. 2d 657 (1962).

Although the pension plan included a 35-year amortization period for the net deficiency in the plan, this provision certainly did not constitute an agreement that promised pension benefits could be sharply slashed if the appellees' chose to terminate the pension plan. In addition, that plan has long since been terminated. Furthermore, appellant is aware of no NLRB or court decisions determining that provisions of a pension plan limiting the employer's obligation to pay promised pensions on termination of the plan are within the scope of mandatory bargaining subjects.

The second major distinction between *Oliver* and the instant case is that *Oliver* involved a state antitrust statute and, as this Court has said:

> [p]ermitting state antitrust law to operate in [the labor] field could frustrate the basic federal policies favoring employee organization and allowing elimination of competition among wage earners, and interfere with the detailed system Congress has created for regulating organizational techniques.

Connell Construction Co. v. Plumbers Local 100, 421 U.S. 616, 636 (1975). The Court of Appeals chose to read *Oliver* broadly and emphasized some of its more general dicta relating to preemption. Such an expansive reading of *Oliver,* however, overlooks the fact that *Oliver* was but a part of a long history of efforts by both Congress and

the courts to deal with the conflict that exists between federal labor policy and antitrust policy, both at the state and federal level. *See, e.g. Weber v. Anheuser-Busch, Inc.*, 348 U.S. 468 (1955); Clayton Antitrust Act §20, 29 U.S.C. §52.

Indeed, the district court quite correctly distinguished *Oliver* from the instant case on the grounds that the state law challenged there was an antitrust statute, recognizing that

> [s]tate antitrust statutes present unique problems in the area of labor preemption . . . .
>
> The inherent conflict and delicate balance which exists between labor and antitrust policy does not exist between labor policy and the regulation of pensions.
>
> 412 F. Supp. at 381.

Third, in *Oliver* the employer-employee relationship was continuing while in the instant case the employment relationship had been severed for more than three years before the defendant assessed a pension funding charge. Thus, the Minnesota Act does not impair or alter the ongoing collective bargaining process between employers and employees since once the employment relationship is severed the workers are no longer "employees" within the meaning of federal labor law. *See Allied Chem. & Alkali Wkrs. v. Pittsburgh Plate Glass Co.*, 404 U.S. 157, 166-171 (1971).

The Court of Appeals, in applying *Oliver* to the instant case, also relied extensively on this Court's recent decision of *Lodge 76, Machinists v. Wisconsin Employment Relations Comm.*, — U.S. —, 96 S.Ct. 2548 (1976) where

this Court reversed the Wisconsin Supreme Court's affirmance of an action by the Wisconsin Employment Relations Commission enjoining a concerted refusal to work overtime by union employees during the course of contract negotiations. This action on the part of the Commission was quite clearly a direct and material intrusion into the essence of the collective bargaining process. Wisconsin's restriction of the flexing of bargaining strength by one of the parties to collective bargaining understandably would have had a direct and significant influence on the substantive terms the parties could otherwise reach if left to the "free play of contending economic forces" each party could muster. *Id.* at 2558.

Unlike the state conduct in *Wisconsin Employment Relations Comm.*, the Minnesota Pension Act is "not directed toward altering bargaining positions of employers or unions" and at most has but an "incidental effect on relative bargaining strength." *Id.* at 2560. (Powell, J., and Burger, J., concurring). The Minnesota Act is, at most, peripheral to the bargaining process.

In examining the *Wisconsin Employment Relations Comm.* case, the Court of Appeals properly noted that states "may not directly control the substantive terms of the contract which results from that bargaining", 545 F. 2d at 606, but, beyond this superficial statement, the Court of Appeals never analyzed the *Wisconsin Employment Relations Comm.* case nor purported to establish how it believed the Minnesota law "directly" interfered with the collective bargaining process or the substantive terms of the contract arrived at through that bargaining process. This lack of analysis by the Court of Appeals is critical since even a cursory examination of the Minnesota Act shows

that it is irrelevant to the collective bargaining process and in no way affects that process or alters the economic power of one party. As noted above, the Act comes into play *only* where the employment relationship of a large number of workers is severed or where a pension plan is terminated; and even then, such a termination must result in a forfeiture of accrued pension credits before the Minnesota Pension Act can apply.

In summary, the Court of Appeals quoted extensively from *Wisconsin Employment Relations Commission* and *Oliver* but neglected to analyze those two cases and their relationship with the Minnesota Pension Act. This failure to examine the precise method of operation of the Pension Act led the Court of Appeals to improperly rely on two cases of this Court, both of which involved state conduct affecting the very heart of the collective bargaining process. In contrast, the Minnesota Act operates, at most, in a very peripheral manner on labor relations.

2. Congress Has Evidenced Its Determination That State Regulation Of Pension Plans Is Compatible With Federal Labor Laws.

The NLRA contains no provisions preempting state laws. Accordingly, this Court has pointed out that:

> A . . . factor that has played an important role in [the] shaping of the preemption doctrine has been the necessity to act without specific congressional direction. The precise extent to which state law must be displaced to achieve . . . [the] ends sought by the national legislature has never been determined by the Congress . . . .

Amalgamated Ass'n. of Street Employees v. Lockridge, 403 U.S. 274, 289 (1971).

Consequently, in the absence of express indications by Congress of the extent to which it intended the NLRA to supersede state laws, the courts have fashioned preemption standards based on their interpretation of Congressional intent. In the field of pension plan regulation, there are relevant expressions of Congressional intent. The Court of Appeals read this intent in a contorted and narrow manner and attempted to minimize if not completely ignore its significance. However, to the extent that "the labor relations preemption doctrine finds its basic justification in the . . . intent of Congress[,]" *Lockridge, supra* at 302, those expressions cannot so readily be dismissed and ignored.

a. The Enactment Of ERISA And The Acknowledgement In ERISA Of The Existence And Efficacy Of Similar State Legislation Evidences The Lack Of Conflict Between Pension Protection And The NLRB.

The enactment of the Employee Retirement Income Security Act (ERISA), 29 U.S.C. §1001, *et seq.*, on September 2, 1974, was a recognition that existing state and federal legislation had not been adequate to provide the necessary protection of promised pension benefits. *See generally* 29 U.S.C. §1001(a).

ERISA, which provided, *inter alia*, minimum participation, vesting, and funding provisions[11] imposes direct restrictions on the substantive terms of pension plans and inter-

[11] 29 U.S.C. §§1051-1102.

feres with the terms of pension plans far more directly than the Minnesota Pension Act does. Additionally, the termination insurance provisions of ERISA[12] impose a liability on employers for the payment of forfeited pension benefits.

Significantly, ERISA provides no exemption from its coverage for collectively-bargained pension plans. Moreover, Congress imposed its substantive requirements on pension plans, including those collectively-bargained-for, without purporting to modify or alter its NLRA labor policy concerning collective bargaining. In fact, Congress, in ERISA, explicitly disclaimed any such modification or alteration of other federal laws:

> Nothing in this subchapter shall be construed to alter, amend, modify, invalidate, impair, or supersede any law of the United States (except as provided in section 1031 and 1137(b) of this title) . . . .

29 U.S.C. §1144(d). The most direct and logical conclusion to be derived from the fact that Congress imposed its regulation of pension plans on collectively-bargained plans is that such regulation poses no conflict with the collective bargaining process. Since Congress did not believe that ERISA interfered with the NLRA, it follows that the Minnesota Act does not in any way interfere with the NLRA.

In addition, the treatment accorded state laws relating to pension plans by ERISA is a further indication that Congress perceived no conflict between its labor policy and state regulation of pension plans to protect pension benefits. Although such state laws are preempted by ERISA, presumably to avoid duplicate or inconsistent regulation

[12] 29 U.S.C. §§1301-1381.

of pension plans, preemption was specifically not made effective until January 1, 1975. 29 U.S.C. §1144(a). Moreover, state pension laws were not preempted at all with respect to causes of action that arose and acts or omissions that occurred prior to January 1, 1975. *Id.*

If Congress had perceived a conflict between such state laws and its policy concerning collective bargaining under the NLRA, it is doubtful that it would have allowed such state statutes to remain in effect even from September 2, 1974, the date of enactment of ERISA, to January 1, 1975, the effective date of the preemption provision. Nor is it logical that Congress would have provided the exception to preemption for enforcement and resultant continued efficacy of state laws if it had deemed them to be in conflict with national labor policy.

b. The Pension Disclosure Act Expressly Reserved To The States Authority To Regulate The Administration And Dissolution Of Pension Plans.

The Welfare and Pension Plans Disclosure Act (hereinafter the "Pension Disclosure Act"), 29 U.S.C. §301 *et seq.*, a precursor to ERISA, was enacted in 1958 following extensive Congressional study of the need for legislation to protect employee pension and welfare benefits.[13] *See* S. Rep. No. 1440, 85th Cong., 2d Sess. (1958), 1958 *U.S. Code Cong. and Adm. News*, 4137-4140, 4150-51.

However, in attempting to alleviate the problems involving pension plans through the Pension Disclosure Act, Congress chose to limit the role of the federal government merely to requiring reporting on the disclosure of infor-

[13] The Pension Disclosure Act was repealed by ERISA and replaced by reporting and disclosure provisions in that Act.

mation concerning the terms and administration of such plans. That limitation did not, however, reflect a decision to leave pension plans unregulated for the Act specifically provided that state laws relating to pension plans were to remain viable.

> The provisions of this chapter . . . shall not be held to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law . . . of any State affecting the operation or administration of employee . . . pension benefit plans. . . .

29 U.S.C. §309(b). Indeed, it has been held with respect to state regulation of the dissolution of a collectively-bargained employee welfare fund that section 309(b) "in so many words permits a State such regulation. . . ." *Thacher v. United Construction Workers,* 10 N.Y. 2d 439, 444, 180 N.E. 2d 245, 247, 224 N.Y.S. 2d 657, 660 (1962).

Furthermore, it is evident that in considering the scope of the Pension Disclosure Act and the continuing viability of state laws relating to pensions Congress was not unmindful of the Act's relationship to the labor policy expressed in previous enactments. The legislative history of the Pension Disclosure Act reveals that Congress was aware that it was dealing with both collectively-bargained pension plans and those not so bargained for, and of relevant distinctions between those two types of plans. *See, e.g.,* S. Rep. No. 1440, 85th Cong., 2d Sess. (1958), 1958 *U.S. Code Cong. and Adm. News* 4137, 4143-4144; H.R. Rep. No. 2283, 85th Cong., 2d Sess. (1958), 1958 *U.S. Code Cong. and Admin. News* 4181, 4188-4189.[14]

Thus, fully cognizant of its established labor policy, and in the face of explicit concern for the effect of disclosure and reporting requirements on the collective bargained process, Congress enacted the Pension Disclosure Act, limiting the federal role to reporting and disclosure but clearly reserving a critical regulatory function to the states. The logical import of that action is that Congress did not consider state regulation of the administration, operation, and dissolution of pension plans directed at the problems that required the enactment of the Pension Disclosure Act to be in conflict with established federal labor policy.

CONCLUSION

The established judicial tests for preemption do not warrant invalidation of the Minnesota Pension Act. Furthermore, Congress through ERISA and the Pension Disclosure Act has indicated its intent that pension regulation was to be left to the states until ERISA became effective. The court of appeals chose to read this Court's labor preemption decisions very broadly and the legislative history of the relevant pension laws narrowly in order to invalidate the Minnesota Act and extinguish much of the pensions of nearly 1,000 former White Motor workers. This approach suggests a striking lack of sensitivity for our federal system and the presumption of validity which attaches to all legislation, including state legislation. A more balanced

[14]In addition, the minority and supplemental views that Senator Gordon Allott expressed in that Senate Report raised particular concern for the effect of the Pension Disclosure Act on the collective bargaining process. S. Rep. No. 1440, 85th Cong., 2d Sess. (1958), 1958 *U.S. Code Cong. and Adm. News* 4137, 4168 and 4175.

view of the role which state legislatures and state governments play in this nation's federal system and a more compassionate view of the hundreds of White Motor retirees who relied for many of their working years on the promise of a decent pension would undoubtedly have led to an affirmance of the district court decision.

For the benefit of nearly 1,000 retirees who have lost the major part of their pensions and to clarify what role the states still have in areas tangentially related to labor relations, this Court should note probable jurisdiction.

Respectfully submitted,

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 76-1266

White Motor Corporation and White Farm Equipment Company,

Appellants,

vs.

E. I. Malone, Commissioner of Labor and Industry for the State of Minnesota,

Appellee.

Appeal from the United States District Court for the District of Minnesota.

Submitted: September 15, 1976
Filed: December 2, 1976

Before BRIGHT and WEBSTER, Circuit Judges, and TALBOT SMITH, Senior District Judge.*

*TALBOT SMITH, Senior District Judge, Eastern District of Michigan, sitting by designation.

BRIGHT, Circuit Judge.

The question presented by this case is whether federal labor policy preempts the legislative power of the State of Minnesota to impose upon the White Motor Corporation[1] (White Motor) the obligation to fully fund its employee pension plan upon the closing of its factory and terminating its employees, notwithstanding an agreement to the contrary contained in the collective bargaining contract between White Motor and the employees' unions. The district court answered this preemption question in the negative[2] and denied White Motor injunctive relief barring enforcement of the questioned Minnesota legislation, referred to here as the Minnesota Pension Act.[3] We disagree, and hold that the Minnesota Pension Act, as applied to White Motor, is preempted by federal labor policy.

We have earlier considered other problems relating to White Motor's pension plan.[4] The historical facts related there are a prelude to the present litigation. White Motor closed its Minneapolis factory and attempted to terminate as of June 30, 1972, the pension plan benefiting employees

[1]The district court described the organizational history of appellant White Motor, as follows:

> In 1962, White Motor organized a subsidiary, Minneapolis-Moline, Inc. Minneapolis-Moline, Inc. on January 1, 1963 acquired the assets of Motec Industries, Inc. (formerly called the Minneapolis-Moline Company) which had operated farm manufacturing plants at Hopkins, Minnesota and Minneapolis, Minnesota, on Lake Street. In 1969 Minneapolis-Moline, Inc. changed its name to White Farm. White Farm still operates the Hopkins plant but closed the Lake Street plant in June, 1972. [*White Motor Corp. v. Malone*, 412 F. Supp. 372, 373 (D. Minn. 1976).]

[2]The district court opinion is supported as *White Motor Corp. v. Malone*, 412 F. Supp. 372 (D. Minn. 1976).

[3]The state statute involved in this litigation is the Private Pension Benefits Protection Act, ch. 437, §§1-18 (1974), Minn. Laws 2d Reg. Sess. 825-31.

[4]*International Union, UAW v. White Motor Corp.*, 505 F.2d 1193 (8th Cir. 1974), *cert. denied*, 421 U.S. 921 (1975).

at the Minneapolis plant and employees at another White Motor factory in Hopkins, Minnesota. The UAW (Union) challenged the action contending that the pension plan could not be terminated prior to May 1, 1974, the expiration date of the collective bargaining agreement then in effect. An arbitrator ruled in favor of the Union, and the federal district court sustained the award as within the arbitrator's powers granted under terms of the collective bargaining agreement. On appeal, we affirmed. During that prior litigation, White Motor took appropriate action to terminate the pension plan as of May 1, 1974, if the arbitrator's determination should be sustained.[5]

During the pendency of the preceding litigation, the Minnesota legislature enacted the Minnesota Pension Act, effective April 10, 1974.[6] The statute requires full funding

[5]We observe that at a later date (June 5, 1975), White Motor, and the Union entered into a new pension plan for the still-operating Hopkins plant.

[6]Relevant statutory provisions read:

> 181B.03 PENSION REFUNDING CHARGE, VESTED BENEFITS PRIOR TO PENSION BENEFITS PROTECTION ACT. Every employer who hereafter ceases to operate a place of employment or a pension plan within this state shall owe to his employees covered by sections 181B.01 to 181B.17 a pension funding charge which shall be equal to the present value of the total amount of vested pension benefits based upon covered service occurring before April 10, 1974 of such employees of the employer who have completed ten or more years of any covered service under the pension plan of the employer and whose vested pension benefits have been or will be forfeited because of the employer's ceasing to operate a place of employment or a pension plan, less the amount of such vested pension benefits which are compromised or settled to the satisfaction of the commissioner as provided in sections 181B.01 to 181B.17.
>
> 181B.04 NONVESTED BENEFITS PRIOR TO ACT. Every employer who hereafter ceases to operate a place of employment or a pension plan within this state shall owe to his employees covered by sections 181B.01 to 181B.17 a pension funding charge which shall be equal to the present value of the total amount of nonvested pension benefits based upon service occurring before

of pension benefits whenever an employer ceases to operate a place of employment or pension plan. The district court described and interpreted the relevant statutory provisions as follows:

The title of the Act describes it as

> "[a]n act relating to private pensions; imposing an obligation upon certain employers who terminate pension plans; providing for the enforcement and method of payment of such obligations." Minn. Laws 1974, ch. 437.

> Minn. Stat. §§181B.03-.06 impose a "pension funding charge" directly against any employer who ceases to operate a place of employment or a pension plan. Such charge shall be equal in amount to the vested and nonvested benefits described in the statutory provisions. These sections essentially provide that any employee who has completed ten or more years of credited service under a pension plan has, upon termination of that plan or of his place of employment, an automatically vested right to all pension benefits he would have received had the particular plan not been terminated or had the place of business not been closed.

> Minn. Stat. §§181B.09-.12 provide that the Commissioner of Labor and Industry, after investigation, shall certify amounts owing by an employer. That certified amount is declared, under §181B.11, to "be a lien upon the employer's assets." The pension funding charge is used to purchase an annuity payable to the employee when he reaches normal retirement age. [*White Motor Corp. v. Malone*, 412 F. Supp. 372, 375 (D. Minn. 1976).]

April 10, 1974 of such employees of the employer who have completed ten or more years of any covered service under the pension plan of the employer and whose nonvested pension benefits have been or will be forfeited because of the employer's ceasing to operate a place of employment or a pension plan, less the amount of such nonvested pension benefits which are compromised or settled to the satisfaction of the commissioner as provided in sections 181B.01 to 181B.17. [Private Pension Benefits Protection Act. ch. 437, §§3, 4 (1974), Minn. Laws 2d Reg. Sess. 828 (codified as Minn. Stat. §§181B.03, .04).]

Pursuant to applicable provisions of the Minnesota Pension Act, the State of Minnesota notified White Motor that the corporation owed a pension funding charge of $19,-150,053. White Motor's obligations as to vesting and, particularly, as to funding under the pension plan differed significantly from obligations imposed on employers by the Minnesota Pension Act. The district court described the history of White Motor's plan and discussed the differences in obligations imposed on the employer by its plan, as compared to the statutory obligations under Minnesota law, as follows:

> In 1950, a pension plan was established for the employees of the predecessor of White Farm [White Motor]. This pension plan was carried forward in some form in each of the subsequent years that collective bargaining agreements were entered into: 1954, 1959, 1962, 1965, 1968 and 1971. Since 1955, the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America and certain of its local unions (hereinafter collectively referred to as the "UAW") have been the bargaining representatives for production and maintenance em-

ployees and clerical employees at the Lake Street and Hopkins plants. Pension benefits resulting from collective bargaining agreements continued to increase after the purchase of Motec Industries by White Motor in 1963.

The 1971 version of the pension plan is the plan pertinent to this action. The 1971 plan contained a provision, first inserted in the 1968 plan, requiring the funding of unpaid past service liability. Unpaid past service liability is at any given time, the excess of the accrued liability of the pension fund over the present value of the assets of the fund. The 1971 plan provided:

> *Section 9.05*
>
> The unfunded net deficiency as of January 1, 1971 shall be amortized over a thirty-five (35) year period from January 1, 1971. The deficiencies resulting from benefit increases effective January 1, 1972 and January 1, 1973 shall be funded uniformly over a thirty-five (35) year period from January 1, 1972 and January 1, 1973 respectively.
>
> * * *

In language unchanged since the 1950 pension plan, the 1971 plan provided for the payment of pensions as follows:

> *Section 6.09—Source of Pensions*
>
> Pensions shall be payable only from the Fund and rights to pensions shall be enforceable only against the Fund.
>
> * * *

> *Section 6.17—No Other Benefits*
>
> No benefits other than those specifically provided for are to be provided under this Plan. No employee shall have any vested right under the Plan prior to his retirement and then only to the extent specifically provided herein.
>
> * * *
>
> *Section 9.04—Rights of Employees in the Fund*
>
> No employees, participant or pensioner shall have any right to, or interest in, any part of any Trust Fund created hereunder, upon termination of employment or otherwise, except as provided under this Plan and only to the extent therein provided. All payments of benefits as provided for in this Plan shall be made only out of the Fund or Funds of the Plan and neither the Company nor any Trustee nor any Pension Committee or Member thereof shall be liable therefor in any manner or to any extent.

During the 1968 and 1971 negotiations with UAW, Pension Guarantees applicable to the Lake Street and Hopkins plants were given by White Motor. These Guarantees provided that, upon termination of the pension plan, benefits were guaranteed by White Motor at a designated benefit level. By giving the Guarantees, White Motor assumed a direct liability of approximately $7,000,000.

* * *

At the time the Lake Street plant was closed the pension fund was only partially funded and there was

> a net deficiency in the fund of approximately $14-000,000. [*White Motor v. Malone, supra,* 412 F. Supp. at 373-75 (footnote omitted).]

The Minnesota Pension Act obligations conflict with White Motor's pension plan provisions in the following respects: (1) the Act grants employees vested rights to pension benefits which are not available under the pension plan; (2) to the extent of any deficiency in the pension fund, the Act requires satisfaction of pension benefits from the general assets of the employer, while the pension plan provides that benefits shall be paid only out of the pension fund; and (3) the Act does not permit employers to escape liability for funding of pension rights, but the pension plan permits White Motor to terminate the plan at any time, and in so doing end any liability for future payments to the pension fund, save those specifically guaranteed. Thus, essential features of the pension plan, deferred funding of past service liability[7] coupled with limited employer liability and the power to terminate, were negated by the Pension Act.

The district court rejected White Motor's summary judgment motion for a declaration of invalidity of the Pension Act on preemption grounds, and for relief by way of a temporary injunction against its enforcement, reasoning that,

[7]The district court noted that deferred funding of past service liability is a common feature of pension plans. In essence, past service liability is met during continuing business operations by the employer's continuing contributions to the pension fund. If the plan is terminated, the pension fund becomes fixed and pension obligations remain partially unfunded. The district court also noted that in the 1971 collective bargaining agreement the parties had agreed to amortize the unfunded deficiency over the next 35 years. *White Motor Corp. v. Malone, supra,* 412 F. Supp. at 374.

> [t]he employer's duty to bargain in good faith over pensions is not altered by the Pension Act. The Pension Act does not require labor and management to agree to a pension plan or that specific provisions be included in a pension plan.
>
> The NLRA does not regulate the substantive terms of a collective bargaining agreement. * * *
>
> The danger addressed in *Garmon* [359 U.S. 236 (1959)] is not presented by the facts of the present action. The state is not attempting to regulate a subject matter which lies within the exclusive competence of the National Labor Relations Board. The Pension Act does not
>
> > ". . . regulate conduct so plainly within the central aim of federal regulation involv[ing] too great a danger of conflict between power asserted by Congress and requirements imposed by state law. . . ."
>
> [*White Motor Corp. v. Malone, supra,* 412 F. Supp. at 379 (citations omitted).]

Additionally, the district court determined the preemption doctrine was inapplicable to pension plans, on the ground that Congress in the Welfare and Pension Plans Disclosure Act, Pub. L. No. 85-836, 72 Stat. 997 (1958) (codified at 29 U.S.C. §301 *et seq.*), as amended, explicitly recognized state power over pension plan "operation" or "administration." In that regard the district court wrote:

> Congress expressly provided that states should remain free to become involved in the regulation of pension plans when it stated:

> The provisions of this chapter . . . shall not be held to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law . . . of any State affecting the operation or administration of employee . . . pension benefit plans. . . .

29 U.S.C. §309(b).

The legislative history of the Pension Disclosure Act further emphasizes the regulatory power retained by the states. The Senate Report stated:

> . . . [The Pension Disclosure Act] is a disclosure statute and by design endeavors *to leave regulatory responsibility to the States.*
>
> * * * * *
>
> . . . It is designed to place the primary responsibility for the policing and improved operations of these plans upon the participants themselves, with a minimum of interference in the natural development and operation of such plans, *to leave to the States the detailed regulations relating to insurance, trusts, and other phases of their operations,* and to place the least possible burden by way of costs and otherwise upon the plans and upon the Federal Government. [emphasis added]

S. Rep. No. 1440, 85th Cong., 2d Sess. (1958), 1958 *U.S. Code Cong. and Adm. News* 4137, 4153-4154.

> Moreover, Congress was specifically aware that pension plans were often the product of the collective bargaining process. *See, e.g.,* S. Rep. No. 1440, 85th Cong., 2d Sess. (1958), 1958 *U.S. Code Cong. and Adm. News* 4181, 4188-4189. Thus Congress was not unmindful that it was permitting States to regulate a subject matter which was the product of collective bargaining. [*White Motor Corp. v. Malone, supra,* 412 F. Supp. at 380-81.]

We disagree.

The Minnesota Pension Act directly intrudes upon the employer's substantive obligations under the pension plan, obligations arrived at freely through collective bargaining, and appears in its operation to be a unique legislative act. The Supreme Court's holdings and decisions in the area of federal labor law preemption require reversal.

Section 7 of the National Labor Relations Act (29 U.S.C. §157) establishes the right of employees to form and join labor organizations and to bargain collectively through representatives of their own choosing. Sections 8(a) (5), 8(b) (3), and 8(d) of the National Labor Relations Act, as amended (29 U.S.C. §§158(a) (5), 158(b) (3), and 158 (d)), require employers and labor organizations to bargain in good faith with respect to "wages, hours, and other terms and conditions of employment * * *." Pension plans fall within the category of "wages and other terms and conditions of employment," and are therefore mandatory subjects of bargaining under the National Labor Relations Act. *Inland Steel Co. v. NLRB,* 170 F.2d 247 (7th Cir. 1948), *cert. denied,* 336 U.S. 960 (1949).

Congress, in enacting the NLRA, refrained from specifying those aspects of labor relations which are not subject to state interference. Thus, a considerable body of

law has developed in which the courts have determined when state action affecting collective bargaining is impermissible. The United States Supreme Court recently reviewed and discussed these cases in *Lodge 76, Machinists v. Wisconsin Employment Relations Commission,* — U.S. —, 96 S.Ct. 2548 (1976).

Mr. Justice Brennan, speaking for the majority of the Court, noted the general division of cases into two categories:

> Cases that have held state authority to be preempted by federal law tend to fall into one of two categories: (1) those that reflect the concern that "one forum would enjoin, as illegal, conduct which the other forum would find legal" and (2) those that reflect the concern "that the [application of state law by] state courts would restrict the exercise of rights guaranteed by the Federal Acts." [*Machinists, supra,* — U.S. at —, 96 S.Ct. at 2552 (citation omitted).]

The decision in *Machinists* focused on the second category. The Wisconsin Employment Relations Commission had ordered a union to cease and desist from "authorizing, encouraging or condoning any considered refusal to accept overtime assignments" from the employer after the termination of the previous collective bargaining agreement, and during negotiations for a new agreement, and the Wisconsin courts had entered a judgment enforcing the Commission's order.[8] The *Machinists* appeal to the Supreme Court presented the question whether federal labor

[8] *Lodge 76, Machinists v. Wisconsin Employment Relations Commission,* 67 Wis. 2d 13, 226 N.W.2d 203 (1975).

policy preempted the authority of the state Labor Relations Board to enjoin a union and its members from refusing to work overtime in order to put economic pressure on the employer in negotiations for renewal of an expired collective bargaining agreement. The Court deemed this controversy as falling into the second line of preemption cases, *i.e.,* those "focusing upon the crucial inquiry whether Congress intended that the conduct involved be unregulated because 'left to be controlled by the free play of economic forces.' " *Machinists, supra,* —U.S. at —, 96 S.Ct. at 2553.

The Wisconsin Supreme Court in upholding the injunction had relied on the so-called *Briggs-Stratton* case, *Local 232 Automobile Workers v. Wisconsin Board,* 336 U.S. 245 (1949). *Briggs-Stratton* held that state power was not preempted as to peaceful conduct neither protected by §7 nor prohibited by §8 of the Act, a holding premised on the statement that "[t]his conduct is either governable by the state or it is entirely ungoverned." *Machinists, supra,* — U.S. at —, 96 S.Ct. at 2553, quoting *Briggs-Stratton, supra,* 336 U.S. at 254. The *Machinists* opinion observed that the underpinning of *Briggs-Stratton* had been undercut by subsequent decisions of the Court

> [f]or the Court soon recognized that a particular activity might be "protected" by federal law not only where it fell within § 7, but also when it was an activity that Congress intended to be "unrestricted by *any* governmental power to regulate" because it was among the permissible "economic weapons in reserve . . . actual exercise [of which] on occasion by the parties is part and parcel of the system that the Wagner and Taft-Hartley Acts have recognized." NLRB v. Insurance Agents, 361 U.S. at 488, 489,

80 S.Ct. at 426, 427 (emphasis added). [*Machinists, supra,* — U.S. at —, 96 S.Ct. at 2553-54.]

The *Machinists* decision expressly overruled the *Briggs-Stratton* decision as having been worn away by contrary authority. *Machinists, supra,* — U.S. at —, 96 S.Ct. at 2560.

The *Machinists* case and the cases relied on in *Machinists*[9] considered the power of states to regulate conduct by employers and employees constituting economic weapons used in the collective bargaining process. The *Machinists* opinion deemed the Court's earlier decision in *NLRB v. Insurance Agents,* 361 U.S. 477 (1960), as substantial precedent for overruling *Briggs-Stratton.* In *Insurance Agents,* on-the-job activities by union members interfered with the employer's business, and thus put economic pressure on the employer to accede to the union's bargaining demands. The NLRB held that proof of these tactics justified its determination that the union had failed to bargain in good faith as required by §8(b) (3) of the NLRA. The Supreme Court disagreed:

> [A]part from this essential standard of conduct [good faith], Congress intended that the parties should have wide latitude in their negotiations, unrestricted by any governmental power to regulate the substantive solution of their differences.
>
> * * *
>
> [I]f the Board could regulate the choice of economic weapons that may be used as part of collective bargaining, it would be in a position to exercise considerable influence upon the substantive terms on which the parties contract. As the parties' own devices became more limited, *the Government might have to enter even more directly into the negotiation of collective agreements. Our labor policy is not presently erected on a foundation of government control of the results of negotiations.* [*Insurance Agents, supra,* 361 U.S. at 488, 490 (emphasis added).]

[9]*See* cases cited at *Machinists, supra,* — U.S. at —, 96 S.Ct. at 2555.

Machinists, in its review of pertinent Supreme Court cases,[10] makes it abundantly clear that neither the states nor the National Labor Relations Board may attempt to influence the substantive terms of collective bargaining agreements by regulating the conduct of the parties to collective bargaining negotiations. These agreements are to be controlled by and left to the free play of economic forces. If states cannot control the economic weapons of the parties at the bargaining table, *a fortiori,* they may not directly control the substantive terms of the contract which results from that bargaining.

Appellant in seeking reversal relies heavily on *Local 24, Teamsters v. Oliver,* 358 U.S. 283 (1959). *Oliver* holds that by reason of the preemption doctrine, a state antitrust statute cannot apply to negate terms of a collective bargaining agreement setting wage rates. In that case, a collective bargaining agreement between a group of labor unions and a group of interstate motor carriers prescribed

[10]*See* cases cited in *Machinists, supra,* — U.S. at —, 96 St.Ct. at 2555-59. We, of course, here are not concerned with certain aspects of labor relations which courts have recognized as falling within the police power of the states, such as actual or threatened violence to persons, or destruction of property, or where the activity regulated is of peripheral concern to federal labor relations policy. *See Machinists, supra,* — U.S. at —, 96 S.Ct. at 2551, notes 2 and 3.

a wage scale for truck drivers and, in order to prevent evasion thereof, provided that truck owner-drivers should be paid, in addition to the prescribed wage, not less than a specified minimum rental for the use of their vehicles. Respondent Oliver, a truck owner-driver member of the union had obtained an injunction in the state court, affirmed by the Ohio Supreme Court, to prevent the motor carriers and the local union from carrying out the minimum rent provision on the ground that such term of the collective bargaining agreement violated Ohio antitrust laws. The Supreme Court reversed. The state antitrust law could not be applied to bar the contracting parties from carrying out of the terms of a collective bargaining agreement upon a subject as to which federal law directed them to bargain. The Court said:

> We must decide whether Ohio's antitrust law may be applied to prevent the contracting parties from carrying out their agreement upon a subject matter as to which federal law directs them to bargain. Little extended discussion is necessary to show that Ohio law cannot be so applied. * * * The goal of federal labor policy, as expressed in the Wagner and Taft-Hartley Acts, is the promotion of collective bargaining; to encourage the employer and the representative of the employees to establish, through collective negotiation, their own charter for the ordering of industrial relations and thereby to minimize industrial strife. See *Labor Board* v. *Jones & Laughlin Steel Corp.*, 301 U.S. 1, 45; *Labor Board* v. *American National Ins. Co.*, 343 U.S. 395, 401-402. Within the area in which collective bargaining was required, Congress was not concerned with the substantive terms upon which the parties agreed. * * * [*Oliver, supra*, 358 U.S. at 295.]

Specifically focusing on the threatened impact of the state law on the collective bargaining process, the court said:

> To allow the application of the Ohio antitrust law here would wholly defeat the full realization of the congressional purpose. The application would frustrate the parties' solution of a problem which Congress has required them to negotiate in good faith toward solving, and in the solution of which it imposed no limitations relevant here. Federal law here created the duty upon the parties to bargain collectively; Congress has provided for a system of federal law applicable to the agreement the parties made in response to that duty * * *; and federal law sets some outside limits (not contended to be exceeded here) on what their agreement may provide * * *. We believe that there is no room in this scheme for the application here of this state policy limiting the solutions that the parties' agreement can provide to the problems of wages and working conditions. * * * Since the federal law operates here, in an area where its authority is paramount, to leave the parties free, the inconsistent application of state law is necessarily outside the power of the State. * * * The solution worked out by the parties was not one of a sort which Congress has indicated may be left to prohibition by the several States. * * * We have not here a case of a collective bargaining agreement in conflict with a local health or safety regulation; the conflict here is between the

> federally sanctioned agreement and state policy which seeks specifically to adjust relationships in the world of commerce. If there is to be this sort of limitation on the arrangements that unions and employers may make with regard to these subjects, pursuant to the collective bargaining provisions of the Wagner and Taft-Hartley Acts, it is for Congress, not the States, to provide it. [*Oliver, supra,* 358 U.S. at 295-97 (citations omitted).]

The district court rejected *Oliver* as dispositive in this case, stating:

> Plaintiffs assert that a state's attempt to regulate a subject matter of collective bargaining, such as employee pensions, should not be permitted where that regulation conflicts with the colllective bargaining agreement.
>
> * * *
>
> State antitrust statutes present unique problems in the area of labor preemption. The Supreme Court has consistently held that the NLRA precludes their application to appropriate labor union activities. *See, e.g., Connell Construction Co. v. Plumbers & Steamfitters,* 421 U.S. 616 * * * (1975); *Weber v. Anheuser-Busch, Inc.,* 348 U.S. 468 * * * (1955). Antitrust laws are designed primarily to apply to business combinations and their application to collective action by employees would produce a direct conflict with the national labor policy.
>
> The Court has stated that:
>
>> [p]ermitting state antitrust law to operate in [the labor] field could frustrate the basic federal policies favoring employee organization and allowing elimination of competition among wage earners, and interfere with the detailed system Congress has created for regulating organizational techniques.
>
> *Connell, supra,* 421 U.S. at 636, 95 S.Ct. at 1842, 44 L.Ed.2d at 434.
>
> The inherent conflict and delicate balance which exists between labor and antitrust policy does not exist between labor policy and the regulation of pensions. Congress, in formulating its policies, has indicated that states may regulate pensions. Accordingly, the court concludes that the Minnesota Pension Act does not necessarily stand as an obstacle to the accomplishment of the purposes and objectives of Congress. The broad language of *Oliver* does not require the striking down of the Pension Act. [*White Motor Corp. v. Malone, supra,* 412 F. Supp. at 381.]

In our view, *Oliver* is not to be read so restrictively. We emphasize the Court's language:

> We believe there is no room in this scheme [of federal labor law] for the application here of the state policy limiting the solutions that parties' agreement can provide to the problems of wages and working conditions. [*Oliver, supra,* 358 U.S. at 296.]

Moreover, in *Labor Board v. Insurance Agents,* the Court cited *Oiver* in support of the following statement:

> But apart from this essential standard of conduct Congress intended that the parties should have wide latitude in their negotiations unrestricted by any

> governmental power to regulate the substantive solution of their differences. See *Teamsters Union* v. *Oliver, supra,* at 295. [*Insurance Agents, supra,* 361 U.S. at 488.]

The Supreme Court in *Machinists* also relied on specific language in *Oliver* as a basis for overruling *Briggs-Stratton.*

> Our decisions since *Briggs-Stratton* have made it abundantly clear that state attempts to influence the substantive terms of collective-bargaining agreements are as inconsistent with the federal regulatory scheme as are such attempts by the NLRB: "[s]ince the federal law operates here, in an area where its authority is paramount, to leave the parties free, the inconsistent application of state law is necessarily outside the power of the State." *Local 24 of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A.F.L.-C.I.O.* v. *Oliver,* 358 U.S. 283, 296 * * * (1959). [*Machinists, supra,* — U.S. at —, 96 S.Ct. at 2559.]

Thus, *Oliver* stands for the general proposition that a state cannot modify or change an otherwise valid and effective provision of a collective bargaining agreement.

Finally, we turn to the district court determination that the federal Welfare and Pensions Plans Disclosure Act, Pub. L. No. 85-836, 72 Stat. 997 (1958) (codified at 29 U.S.C §301 *et seq.*) (Disclosure Act), expressly authorizes substantive state regulation of pension plans. The statutory language relied on by the district court is as follows:

> The provisions of this chapter * * * shall not be held to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of the United States or of any State affecting the operation or administration of employee, welfare, or pension benefit plans, or in any manner to authorize the operation or administration of such plan contrary to any such law. [29 U.S.C. §309(b).][11]

Neither this language nor statutory history suggests that Congress intended to regulate substantive provisions, performance of, or the funding of any employee benefit plan or to authorize such regulation by the states.

The express statutory language relied upon by the district court applies to duties and liabilities, civil or criminal, imposed upon persons operating and administering employee welfare or pension benefit plans to conserve and keep safe those funds. The legislative history emphasizes the limited purpose of this legislation and that the Act's provisions to not affect substantive terms of employee benefit plans. We turn to the Senate Report as the Senate Bill was passed in lieu of the House Bill. *See* 3 U.S. Code Cong. & Adm. News 4137 (1958). That Senate Report, in part, reads:

> Complete disclosure of the details of welfare and

[11]The Welfare & Pension Plans Disclosure Act has been superseded by the Employee Retirement Income Security Act (ERISA), a comprehensive pension reform law enacted on September 2, 1974. The ERISA specifically repealed the Pension Disclosure Act, 29 U.S.C. §1031, and replaced it with new reporting and disclosure provisions. 29 U.S.C. §§1021-1031. The district court noted:

> ERISA also sought to avoid all future questions of preemption by specifically providing for the superseding of all state laws relating to employee benefit plans. 29 U.S.C. §1144. Since ERISA with its preemption provision was enacted after the occurrences which give rise to the present case before the court, plaintiffs have not sought to avail themselves of any of its provisions of legislative history. [*White Motor Corp.* v. *Malone, supra,* 412 F. Supp. at 380 n. 6.]

pension plan operations provides the most effective single deterrent against abuses and the many other weaknesses of these plans. It would provide the greatest incentive to good management and investment policies and the best protection to the interests and rights of employees, employers, and the Government alike [*Id.* at 4153.]

In further discussion of the principles and purposes of the Senate Bill, the Report adds:

> S. 2888 provides for registration, reporting, and disclosure of the financial operations of all types of private employee welfare and pension benefit plans. It is designed to place the primary responsibility for the policing and improved operations of these plans upon the participants themselves, with a minimum of interference in the natural development and operation of such plans, to leave to the States the detailed regulations relating to insurance, trusts, and other phases of their operations, and to place the least possible burden by way of cost and otherwise upon the plans and upon the Federal Government. It is the policy of this bill to protect the revenues of the United States, the interests of participants in the plans, their beneficiaries, the employers and the public, and to conserve the moneys involved so as to assure their utilization for their intended purposes.
>
> The bill would give the employee-beneficiaries of these plans an accounting for the money they spend and which is spent in their behalf for future security benefits and permits them to appraise the merits of these plans, which in many cases are held out to them as a competitive inducement of employment. It would give the employee-beneficiaries protections comparable to those provided in other large-scale investment operations. It is designed to deter dishonesty, mismanagement, and waste by allowing public scrutiny of the financial operations of such plans, and it accomplishes disclosure of the finances of these plans in one operation for all purposes. [*Id.* at 4154-55.]

Additionally, the report discusses criminal penalties and, in that discussion, expressly negates any purpose of the enactment to regulate substantive provisions:

> Although making no attempt to regulate employee-benefit plans, the bill, in addition to the necessary authority to the Secretary of Labor to enforce the administration of the legislation, provides severe criminal sanctions for willful, false statements, the destruction of records, embezzlement, kick-backs, and other self-dealing. [*Id.* at 4157.]

Clearly, the preemption disclaimer provision of the Disclosure Act, §309(b), relates to state statutes governing those obligations of trust undertaken by persons managing, administrating, or operating employee benefit funds, the violation of which gives rise to civil and criminal penalties. Accordingly, no warrant exists for construing this legislation to leave to a state the power to change substantive terms of pension plan agreements.

The construction to the contrary pressed upon us by the appellee would turn upside down well-established labor law principles.

> An appreciation of the true character of national labor policy expressed in the NLRA and LMRA indicates that in providing a legal framework for union organization, collective bargaining, and the conduct of labor disputes, Congress struck a balance of protection, prohibition, and laissez faire in respect to union organization, collective bargaining, and labor disputes that would be upset if a state could also enforce statutes or rules of decision resting upon its views concerning accommodation of the same interests. [Cox, *Labor Law Preemption Revisited*, 85 Harv.L.Rev. 1337, 1352 (1972).]

The economic travail suffered by retirees of the former Minnesota Moline Company plant in Minneapolis, Minnesota, did not result from misapplication, misappropriation, or misuse of any pension trust funds. The employees' expectation of pension benefits remained subject to change by reason of changing economic conditions, because the employer reserved the right to terminate the plan. Blame cannot be attached to either the Union or the employer for the changed economic conditions which resulted in the closing of the Lake Street plant and the termination of the pension plan. The parties (union and employer) agreed upon a pension plan that was never fully funded, or otherwise guaranteed. We presume that the parties agreed to increase current wages, perhaps at the expense of adequately funding retirement benefits.

If the legislative solution presented here can be sustained, then in another day a differently-minded state legislature could take away from working people contract benefits obtained through hard, fair bargaining. We construe national

labor policy to mandate "hands off" by the states in this area of labor relations.

We reverse and remand for the entry of judgment in conformity with this opinion.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

APPENDIX B

WHITE MOTOR CORPORATION and White Farm Equipment Company,

Plaintiffs,

v.

E. I. MALONE, Commissioner of Labor and Industry for the State of Minnesota,

Defendant.

No. 3-75 Civ. 162.

United States District Court,
D. Minnesota,
Third Division.
March 19, 1976.

MEMORANDUM AND ORDER

ALSOP, District Judge.

This matter is presently before the court on motions by all parties. Plaintiffs are seeking a summary judgment, or in the alternative, a preliminary injunction on Count I of the Amended Complaint; defendant is requesting the court to abstain. Plaintiffs have brought this action challenging the constitutionality of the Minnesota Private Pension Benefits Protection Act, Minn. Stat. §181B.01 *et seq.* (1974) (hereinafter the "Minnesota Pension Act").

Plaintiff White Motor Corporation (hereinafter "White Motor") is an Ohio corporation with its principal place of business in Cleveland, Ohio. White Farm Equipment Company (hereinafter "White Farm") is a Delaware corporation with its principal place of business in Oakbrook, Illinois and is a wholly owned subsidiary of White Motor.

The defendant, E. I. Malone, is the Commissioner of Labor and Industry for the State of Minnesota and is obligated to perform certain duties under the Minnesota Pension Act.

The facts giving rise to the dispute between the parties are lengthy. In 1962, White Motor organized a subsidiary, Minneapolis-Moline, Inc. Minneapolis-Moline,Inc. on January 1, 1963 acquired the assets of Motec Industries, Inc. (formerly called the Minneapolis-Moline Company) which had operated farm manufacturing plants at Hopkins, Minnesota and Minneapolis, Minnesota, on Lake Street. In 1969 Minneapolis-Moline, Inc. changed its name to White Farm. White Farm still operates the Hopkins plant but closed the Lake Street plant in June, 1972.

In 1950, a pension plan was established for the employees of the predecessor of White Farm. This pension plan was carried forward in some form in each of the subsequent years that collective bargaining agreements were entered into: 1954, 1959, 1962, 1965, 1968 and 1971. Since 1955, the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America and certain of its local unions (hereinafter collectively referred to as the "UAW") have been the bargaining representatives for production and maintenance employees and clerical employees at the Lake Street and Hopkins plants.[1] Pension benefits resulting from collective bargaining agreements continued to increase after the purchase of Motec Industries by White Motor in 1963.

[1]Prior to 1955, the employees were represented by Local 1146 of the United Electrical, Radio and Machine Workers of America.

The 1971 version of the pension plan is the plan pertinent to this action. The 1971 plan contained a provision, first inserted in the 1968 plan, requiring the funding of unpaid past service liability. Unpaid past service liability is at any given time, the excess of the accrued liability of the pension fund over the present value of the assets of the fund. The 1971 plan provided:

Section 9.05

> The unfunded net deficiency as of January 1, 1971 shall be amortized over a thirty-five (35) year period from January 1, 1971. The deficiencies resulting from benefit increases effective January 1, 1972 and January 1, 1973 shall be funded uniformly over a thirty-five (35) year period from January 1, 1972 and January 1, 1973 respectively.

Deferred funding of past service liability is a common feature of pension plans. In essence, past service liability is met by continued business operations and continued contributions by the employer to the pension fund. If the plan is terminated, the pension fund will not be increased and as a result some past service liability will remain unfunded.

In language unchanged since the 1950 pension plan, the 1971 plan provided for the payment of pensions as follows:

Section 6.09—Source of Pensions

> Pensions shall be payable only from the Fund and rights to pensions shall be enforceable only against the Fund.

* * * * * *

Section 6.17—No Other Benefits

> No benefits other than those specifically provided for are to be provided under this Plan. No employee shall have any vested right under the Plan prior to his retirement and then only to the extent specifically provided herein.

* * * * * *

Section 9.04—Rights of Employees in the Fund

> No employees, participant or pensioner shall have any right to, or interest in, any part of any Trust Fund created hereunder, upon termination of employment or otherwise, except as provided under this Plan and only to the extent therein provided. All payments of benefits as provided for in this Plan shall be made only out of the Fund or Funds of the Plan and neither the Company nor any Trustee nor any Pension Committee or Member thereof shall be liable therefore in any manner or to any extent.

During the 1968 and 1971 negotiations with UAW, Pension Guarantees applicable to the Lake Street and Hopkins plants were given by White Motor. These Guarantees provided that, upon termination of the pension plan, benefits were guaranteed by White Motor at a designated benefit level. By giving the Guarantees, White Motor assumed a direct liability of approximately $7,000,000.

After suffering substantial losses from 1969 to 1971 at its Minneapolis-Moline Division, White Motor in January, 1972 informed the UAW that it intended to close its Minneapolis-Moline plants. Operations at the Lake Street plant were terminated in June 1972 and the plant was

closed and the building subsequently razed. Operations at the Hopkins plant have continued.

Section 10.02 of the pension plan provided that "[t]he Company shall have the sole right at any time to terminate the entire Plan." Relying on this language, White Motor attempted to terminate the pension plan on June 30, 1972. The UAW challenged White Motor's attempt to terminate the plan prior to expiration of the collective bargaining agreement. An arbitrator's award and subsequent litigation upholding that award determined that the plan could not be terminated until the expiration of the collective bargaining agreement on May 1, 1974.[2] The pension plan was thereafter terminated on May 1, 1974.

At the time the Lake Street plant was closed, the pension fund was only partially funded and there was a net deficiency in the fund of approximately $14,000,000.

As of January 1, 1975 there were 981 retirees under the pension plan and 233 persons eligible for deferred pensions by reason of having attained age 40 and 10 years of service at the time of the termination of their employment with White Farm. In addition there were 44 terminated employees who at the time of the termination of their employment had 10 years of service but had not attained the age of 40. Ten years of continuous service is the minimum number of years an employee must have worked for White Motor before becoming eligible for benefits under the plan, but to be so eligible, he must also have attained the age of 40. As of January 1, 1975 there were 260 active employees at the Hopkins plant who were participants in the plan.

[2] *See, International Union, etc. v. White Motor Corp.*, 505 F.2d 1193 (8th Cir. 1974).

On April 10, 1974, the Minnesota Pension Act, Minn. Stat. §181B.01 *et seq.*, was enacted into law. The title of the Act describes it as

> "[a]n act relating to private pensions; imposing an obligation upon certain employers who terminate pension plans; providing for the enforcement and method of payment of such obligations." Minn. Laws 1974, ch. 437.

Minn. Stat. §§181B.03-.06 impose a "pension funding charge" directly against any employer who ceases to operate a place of employment or a pension plan. Such charge shall be equal in amount to the vested and nonvested benefits described in the statutory provisions. These sections essentially provide that any employee who has completed ten or more years of credited service under a pension plan has, upon termination of that plan or of his place of employment, an automatically vested right to all pension benefits he would have received had the particular plan not been terminated or had the place of business not been closed.

Minn. Stat. §§181B.09-.12 provide that the Commissioner of Labor and Industry, after investigation, shall certify amounts owing by an employer. That certified amount is declared, under §181B.11, to "be a lien upon the employer's assets." The pension funding charge is used to purchase an annuity payable to the employee when he reaches normal retirement age.

Pursuant to the provisions of the Pension Act, Malone notified White Motor and White Farm on August 18, 1975 that they owed a pension funding charge of $19,150,053.

Plaintiffs contend that the Pension Act conflicts with

the pension plan in the following manner: (1) the Act provides employees vested rights to pension benefits which would not be available under the plan. Compare §§181B.-03-.06 with Sections 6.17 and 9.04 of the plan; (2) to the extent of any deficiency in the pension fund, the Act requires satisfaction of pension benefits from the general funds of the employer. §§181B.03-.06. The pension plan provides that benefits shall be paid only out of the pension fund and that the Company shall not be liable to any extent. Sections 6.09 and 9.04 of the plan; and (3) the Act completely changes the consequences of teminating the pension plan.

PROCEDURAL POSTURE

Plaintiffs filed their original complaint in May, 1975 alleging that the Minnesota Pension Act is unconstitutional on several grounds. In July, 1975 plaintiffs amended their complaint to include an allegation that the Act is in conflict with the provisions and policies of the National Labor Relations Act, 29 U.S.C. §151 *et seq.,* and thus is preempted under the Supremacy clause of the United States Constitution.[3]

Plaintiffs have moved for a partial summary judgment solely on their preemption claim. Fed. R.Civ. P. 56. In the alternative, plaintiffs seek a preliminary injunction, also based only on the preemption claim, to enjoin the enforcement of the Minnesota Pension Act by the defendant. Defendant has moved the court to abstain from hearing this action pending state construction of the Minnesota Pension Act.

[1-3] The plaintiffs' amended complaint seeks only a declaratory judgment that the Pension Act is invalid.

[3]Art. VI, cl. 2.

The motion for partial summary judgment for declaratory relief is properly heard by a single judge. Plaintiffs' alternative request for a preliminary injunction is carefully based only on preemption. A request for an injunction based on a preemption challenge to a state statute does not require the convening of a three-judge court. *Swift & Co. v. Wickham,* 382 U.S. 111, 86 S. Ct. 258, 15 L. Ed. 2d 194 (1965). Furthermore, where a statute is challenged both on preemption grounds and other constitutional grounds, the court, sitting as a single judge, should decide the preemption issue first. *Hagans v. Lavine,* 415 U.S. 528, 94 S.Ct. 1372, 39 L.Ed. 2d 577 (1974).

The scope and the basis of relief sought is significant for it differs with the relief sought in *Fleck et al. v. Spannaus et al.,* (File No. 3-75 Civ. 178) 412 F. Supp. 366 (D. Minn. 1976), also issued today. The court expended considerable effort in attempting to place the two cases in an identical procedural posture and reluctantly concludes that its attempt to produce a "Brobdingnagian" result was unsuccessful.[4]

Fed. R. Civ. P. 56(c) provides that summary judgment is proper where "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

Minnesota Bearing Co. v. White Motor Corp., 470 F. 2d 1323 (8th Cir. 1973), sets forth the standard for the issuance of a preliminary injunction:

[4]Professor Chafee once wrote, "The King of Brobdingnag gave it for his opinion that, 'whoever could make two ears of corn, or two blades of grass to grow upon a spot of ground where only one grew before, would deserve better of mankind, and do more essential service to his country than the whole race of politicians put together." In matters of justice, however, the benefactor is he who makes one lawsuit grow where two grew before." *Bills of Peace with Multiple Parties,* 45 Harv.L.Rev. 1297 (1932).

> In order to justify the issuance of a preliminary injunction by the trial court, the movant has the burden of showing: (1) substantial probability of success at trial by the moving party, and (2) the irreparable injury to the moving party absent such issuance. Other factors which may be considered in the decision to grant or to deny the request are the absence of substantial harm to other interested parties, and the absence of harm to the public interest.

470 F. 2d at 1326.

The court will examine defendant's motion to abstain before considering plaintiffs' alternative motions of summary judgment or preliminary injunction.

ABSTENTION

Defendant has moved for abstention on the grounds that state administrative or court proceedings may eliminate or substantially modify plaintiffs' federal challenge to the Act.

[4, 5] Abstention cases have generally ". . . dealt with unresolved questions of state law which only a state tribunal could authoritatively construe." *Wisconsin v. Constantineau,* 400 U.S. 433, 438, 91 S. Ct. 507, 511, 27 L. Ed. 2d 515, 520 (1971). Abstention is justified where the state statute is susceptible to a clarifying construction that would alter or eliminate the constitutional question. *Lake Carriers' Ass'n v. MacMullan, 406* U.S. 498, 510, 92 S. Ct. 1749, 1757, 32 L. Ed. 2d 257, 268 (1972); *Zwickler v. Koota,* 389 U.S. 241, 249, 88 S. Ct. 391, 396, 19 L. Ed. 2d 444, 451 (1967). It is not proper to abstain ". . . simply to give state courts the first oppor-

tunity to vindicate the federal claim." *Zwickler v. Koota, supra* at 251, 88 S. Ct. at 397, 19 L. Ed. 2d at 452.

Defendant has failed to indicate to the court any statutory provisions involved in this case which might be construed by a state court so as to modify the federal question being considered. Nor has defendant contended that the state administrative proceeding might relieve plaintiffs of any liability. The present controversy requires the court to construe a federal law, a task which is best performed by a federal court. *See Chemical Specialties Manufacturers Ass'n v. Lowery,* 452 F. 2d 431, 433 (2d Cir. 1971).

Accordingly, defendant's motion to abstain will be denied.

SUMMARY JUDGMENT

Plaintiffs contend that they are entitled to summary judgment on the grounds that the Minnesota Pension Act is in conflict with, and preempted by, the provisions and policies of the National Labor Relations Act, as amended, 29 U.S.C. §§151, 157, 158(a)(5), 158(b)(3), and 158(d). Section 7 of the National Labor Relations Act, 29 U.S.C. §157, (hereinafter NLRA) establishes the right of employees to form and join labor organizations and to bargain collectively through representatives of their own choosing. Sections 8(a)(5), 8(b)(3) and 8(d) of the NLRA require employers and labor organizations to bargain in good faith with respect to "wages, hours and other terms and conditions of employment. . . ."

[6] It has been established that pension plans fall within the category of "wages and other terms and conditions of employment", and are therefore mandatory subjects of bargaining under the NLRA. *Inland Steel Co. v. NLRB,* 170 F. 2d 247 (7th Cir. 1948), *cert. denied,* 336

U.S. 960, 69 S. Ct. 887, 93 L. Ed. 1112 (1949). Plaintiffs assert that since they were required to bargain in good faith over pension benefits and having reached an agreement on a pension plan, a state statute which conflicts with the terms of that agreement infringes on the national policy of collective bargaining and thus has been preempted under the Supremacy clause by the statutes embodying federal labor policy.

The concept of preemption was explained in *Amalgamated Ass'n of Street Employees v. Lockridge,* 403 U.S. 274, 285-286, 91 S. Ct. 1909, 1917, 29 L. Ed. 2d 473, 482 (1971), where the Court stated:

> The constitutional principles of preemption in whatever field of law they operate, are designed with a common end in view: to avoid conflicting regulation of conduct by various official bodies which might have some authority over the subject matter.

The method for determining whether a conflict exists has been addressed by the Supreme Court:

> Deciding whether a state statute is in conflict with a federal statute and hence invalid under the Supremacy Clause is essentially a two-step process of first ascertaining the construction of the two statutes and then determining the constitutional question whether they are in conflict.

Perez v. Campbell, 402 U.S. 637, 644, 91 S. Ct. 1704, 1708, 29 L. Ed. 2d 233, 239 (1971).

Construction of the Statutes

The Minnesota Pension Act has not been construed by any judicial body—state or federal. However, an analysis of the Act indicates the protection it seeks to provide.

The title of the Act describes it as

> "[a]n act relating to private pensions; imposing an obligation upon certain employers who terminate pension plans; providing for the enforcement and method of payment of such obligations." Minn. Laws 1974, ch. 437.

Through the imposition of a "pension funding charge", the Act protects employees with ten or more years of credited service under a pension plan from forfeiture of those pension benefits. Minn. Stat. §§181B.03-.06. The protection is provided by using the pension funding charge to purchase an annuity that will provide the protected employee with monthly pension benefits after his normal retirement age. Minn. Stat. §181B.12. The pension funding charge is assessed directly against the employer when it ceases to operate a place of employment in Minnesota leaving a substantial number of employees unemployed, or if it terminates a pension plan. Minn. Stat. §§181B.03-.06.

The NLRA has been authoritatively construed by the Supreme Court on numerous occasions. It has been described as " . . a comprehensive code passed by Congress to regulate labor relations in activities affecting interstate and foreign commerce." *Nash v. Florida Industrial Commission,* 389 U.S. 235, 238, 88 S.Ct. 362, 365, 19 L.Ed. 2d 438, 442 (1967).

The NLRA is

". . . designed to promote industrial peace by encouraging the making of voluntary agreements governing relations between unions and employers. The Act does not compel any agreement whatsoever between employees and employers. Nor does the Act regulate the substantive terms governing wages, hours and working conditions which are incorporated in an agreement." [footnotes omitted]

Labor Board v. American National Insurance Co., 343 U.S. 395, 401-402, 72 S.Ct. 824, 828, 96 L.Ed. 1027, 1036 (1952); *See Labor Board v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 45, 57 S.Ct. 615, 628, 81 L.Ed. 893, 916 (1937).

Question of Conflict

With the construction of the statutes considered, the question presented is whether state regulation of pensions is in conflict with and thus preempted by the NLRA and its policies.

1. Labor Law Preemption

The well developed laws surrounding labor preemption has focused on primarily two areas: (1) regulation of labor-management relations and labor disputes, and (2) regulation of conduct of a union towards an individual member. *See Cox, Labor Law Preemption Revisited*, 85 Harv.L.Rev. 1337 (1972). As a consequence, the "test" for determining whether State decisional or statutory law is preempted is a result of litigation in those areas. The principles established in those cases are helpful in analyzing the claims of the plaintiffs herein, but nonetheless the court is still left with a case of first impression concerning

the permissible extent of state regulation of employee pension funds.

The established standard for labor law preemption was enunciated in *San Diego Building Trades Council v. Garmon*, 359 U.S. 236, 79 S.Ct. 773, 3 L.Ed. 2d 775 (1959). In *Garmon* the Supreme Court overturned a state court's award of damages for economic injuries resulting from peaceful picketing. The status of the picketing was uncertain under the NLRA since the Labor Board had not ruled on the question. The court explained its restriction on state court jurisdiction saying:

> When it is clear or may fairly be assumed that the activities which a State purports to regulate are protected by §7 of the National Labor Relations Act, or constitute an unfair labor practice under §8, due regard for the federal enactment requires that state jurisdiction must yield. To leave the States free to regulate conduct so plainly within the central aim of federal regulation involves too great a danger of conflict between power asserted by Congress and requirements imposed by state law. . . .
>
> At times it has not been clear whether the particular activity regulated by the States was governed by §7 or §8 or was, perhaps, outside both these sections. . . . When an activity is arguably subject to §7 or §8 of the Act, the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board if the danger of state interference with national policy is to be averted.

The *Garmon* "arguably protected or prohibited" test was reaffirmed in *Amalgamated Ass'n of Street Employ-*

ees v. Lockridge, 403 U.S. 274, 91 S.Ct. 1909, 29 L.Ed. 2d 473 (1971), in the context of an employee-union controversy.

Section 7 prescribes the protected rights of employees. There are no employees party to the present action contending that their rights have been interfered with.

Section 8 of the NLRA requires employers and labor organizations to bargain in good faith over "wages, hours and other terms and conditions of employment . . .", which would include pensions.

The employer's duty to bargain in good faith over pensions is not altered by the Pension Act. The Pension Act does not require labor and management to agree to a pension plan or that specific provision be included in a pension plan.

[7] The NLRA does not regulate the substantive terms of a collective bargaining agreement. *Labor Board v. American National Insurance Co., supra,* 343 U.S. at 402, 72 S.Ct. at 828, 96 L.Ed. at 1036.

[8] The danger addressed in *Garmon* is not presented by the facts of the present action. The state is not attempting to regulate a subject matter which lies within the exclusive competence of the National Labor Relations Board. The Pension Act does not

> ". . . regulate conduct so plainly within the central aim of federal regulation involv[ing] too great a danger of conflict between power asserted by Congress and requirements imposed by state law. . . ." *Garmon, supra,* 359 U.S. at 244, 79 S.Ct. at 779, 3 L.Ed. 2d at 782.

2. Congressional Intent

[9] Although the Pension Act does not seem on its face to conflict with the regulatory scheme of the NLRA, it is nonetheless the court's function

> ". . . to determine whether [the] challenged state statute 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.' *Hines v. Davidowitz,* 312 U.S. 52, 67, 61 S.Ct. 399, 85 L.Ed. 581 (1941). [further citations omitted]

Perez v. Campbell, supra, 402 U.S. at 649, 91 S.Ct. at 1711, 29 L.Ed. 2d at 642.

Plaintiffs contend that the purpose and objective of Congress which is being frustrated by the Pension Act is the collective bargaining process. This frustration allegedly occurs because labor and management agreed to a provision in a collective bargaining agreement covering the termination of the pension plan and now the State of Minnesota seeks to apply a law which would effectively alter the agreed-to provision.

[10] A court cannot ". . . declare pre-empted all local regulation that touches and concerns in any way the complex interrelationships between employees, employers, and unions; obviously much of this is left to the States." *Lockridge, supra,* 403 U.S. at 289, 91 S.Ct. at 1920, 29 L.Ed. 2d at 484. It is recognized that Congress developed its special framework of labor laws within a larger context of state laws which provide for rights of property, public order and the promotion of public health and welfare. Cox, *Labor Law Preemption Revisited, supra,* at 1355.

[11] In examining Congressional intent it should be recognized that "the principle of pre-emption that informs our general national labor law was born of [the Supreme] Court's efforts, without the aid of explicit congressional guidance. . . ." *Lockridge, supra,* 403 U.S. at 286, 91 S.Ct. at 1918, 29 L.Ed. 2d at 482. Although Congress has not given explicit guidance in the NLRA of the extent that it desired to preempt state laws of the type here being challenged, it has given indications in other laws that legislation and regulation by the States of various subject matter would be permissible.

For example, Congress indicated in the Fair Labor Standards Act, 29 U.S.C. §201 *et seq.* that States could establish a higher minimum wage than was required by federal law.[5] Such state requirements can be imposed even though wages are a mandatory subject of collective bargaining.

In a similar vein, the Supreme Court looked to Congress' affirmative indications in another enactment when it held that an employee could bring an action in state court against his employer for breach of a collective bargaining agreement even though the employer's action was an unfair labor practice under Section 8 of the NLRA

[5]Section 18(a) of that Act, 29 U.S.C. §218(a) provides as follows:

No provision of this chapter or of any order thereunder shall excuse noncompliance with any Federal or State law or municipal ordinance establishing a minimum wage higher than the minimum wage established under this chapter or a maximum workweek lower than the maximum workweek established under this chapter, and no provision of this chapter relating to the employment of child labor shall justify noncompliance with a Federal or State law or municipal ordinance establishing a higher standard than the standard established under this chapter. No provision of this chapter shall justify any employer in reducing a wage paid by him which is in excess of the applicable minimum wage under this chapter, or justify any employer in increasing hours of employment maintained by him which are shorter than the maximum hours applicable under this chapter.

and thus within the jurisdiction of the National Labor Relations Board. *Smith v. Evening News Association,* 371 U.S. 195, 83 S.Ct. 267, 9 L.Ed. 2d 246 (1962).

Relevant to the state statute being challenged by the plaintiffs was the expression of Congressional intent for state regulation of pensions when Congress enacted the Welfare and Pension Plans Disclosure Act (hereinafter the "Pension Disclosure Act"), 29 U.S.C. §301 *et seq.*[6] Congress expressly provided that states should remain free to become involved in the regulation of pension plans when it stated:

> The provisions of this chapter . . . shall not be held to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law . . . of any State affecting the operation or administration of employee . . . pension benefit plans. . . .

29 U.S.C. §309(b).

The legislative history of the Pension Disclosure Act further emphasizes the regulatory power retained by the states. The Senate Report stated:

[6]The Pension Disclosure Act was the controlling pension statute in effect when the Minnesota Pension Act was enacted. Subsequently, the Employee Retirement Income Security Act (ERISA), a comprehensive pension reform law, was enacted by Congress. 29 U.S.C. §1001 *et seq.* ERISA specifically repealed the Pension Disclosure Act, 29 U.S.C. §1031, and replaced it with new reporting and disclosure provisions. 29 U.S.C. §§1021-1031.

ERISA also sought to avoid all future questions of preemption by specifically providing for the superseding of all state laws relating to employee benefit plans. 29 U.S.C. §1144. Since ERISA with its preemption provision was enacted after the occurrences which give rise to the present case before the court, plaintiffs have not sought to avail themselves of any of its provisions or legislative history. Compare with *Fleck et al. v. Spannaus et al.,* 412 F. Supp. 366 (D.Minn. 1976), also issued today.

> . . . [The Pension Disclosure Act] is a disclosure statute and by design endeavors to leave *regulatory responsibility to the States.*
>
> * * * * * *
>
> . . . It is designed to place the primary responsibility for the policing and improved operations of these plans upon the participants themselves, with a minimum of interference in the natural development and operation of such plans, *to leave to the States the detailed regulations relating to insurance, trusts, and other phases of their operations,* and to place the least possible burden by way of cost and otherwise upon the plans and upon the Federal Government. [emphasis added]

S. Rep. No. 1440, 85th Cong., 2d Sess. (1958), 1958 *U.S. Code Cong. and Adm. News* 4137, 4153-4154.

Moreover, Congress was specifically aware that pension plans were often the product of the collective bargaining process. *See, e.g.*, S. Rep. No. 1440, 85th Cong., 2d Sess. (1958), 1958 *U.S. Code Cong. and Adm. News* 4137, 4143-4144; H.Rep. No. 2283, 85th Cong., 2d Sess. (1958), 1958 *U.S. Code Cong. and Adm. News* 4181, 4188-4189. Thus Congress was not unmindful that it was permitting States to regulate a subject matter which was the product of collective bargaining.

3. Collective Bargaining Agreement

Plaintiffs assert that a state's attempt to regulate a subject matter of collective bargaining, such as employee pensions, should not be permitted where that regulation conflicts with the collective bargaining agreement.

In support of their position, plaintiffs place heavy reliance on *Local 24, Teamsters v. Oliver*, 358 U.S. 283, 79 S.Ct. 297, 3 L.Ed. 2d 312 (1959).

In *Oliver* a group of local labor unions had entered into a collective bargaining agreement with a group of interstate motor carriers providing the wage scale for truck drivers and the minimum rental for drivers who used their own vehicles. A state court enjoined certain carriers and a local union from carrying out the minimum rental provision on the grounds that it violated state antitrust law. However, the Supreme Court held that state antitrust law could not be applied to prohibit the parties from carrying out the terms of its collective bargaining agreement. The Court stated:

> To allow the application of the Ohio antitrust law here would wholly defeat the full realization of the congressional purpose. The application would frustrate the parties' solution of a problem which Congress has required them to negotiate in good faith toward solving, and in the solution of which it imposed no limitations relevant here.

358 U.S. at 295-296, 79 S.Ct. at 304, 3 L.Ed. 2d at 321.

State antitrust statutes present unique problems in the area of labor preemption. The Supreme Court has consistently held that the NLRA precludes their application to appropriate labor union activities. *See, e.g. Connell Construction Co. v. Plumbers & Steamfitters*, 421 U.S. 616, 95 S.Ct. 1830, 44 L.Ed. 2d 418 (1975); *Weber v. Anheuser-Busch, Inc.*, 348 U.S. 468, 75 S.Ct. 480, 99 L.Ed. 546 (1955). Antitrust laws are designed primarily to apply to business combinations and their application to collective

action by employees would produce a direct conflict with the national labor policy. The Court has stated that:

> [p]ermitting state antitrust law to operate in [the labor] field could frustrate the basic federal policies favoring employee organization and allowing elimination of competition among wage earners, and interfere with the detailed system Congress has created for regulating organizational techniques.

Connell, supra, 421 U.S. at 636, 95 S.Ct. at 1842, 44 L.Ed. 2d at 434.

[12] The inherent conflict and delicate balance which exists between labor and antitrust policy does not exist between labor policy and the regulation of pensions. Congress, in formulating its policies, has indicated that states may regulate pensions. Accordingly, the court concludes that the Minnesota Pension Act does not necessarily stand as an obstacle to the accomplishment of the purposes and objectives of Congress. The broad language of *Oliver* does not require the striking down of the Pension Act.

Plaintiffs have also relied on the following cases which merit comment: *Railway Employees' Dept. v. Hanson,* 351 U.S. 225, 76 S.Ct. 714, 100 L.Ed. 1112 (1956); *California v. Taylor,* 353 U.S. 553, 77 S.Ct. 1037, 1 L.Ed. 2d 1034 (1957); *United Air Lines, Inc. v. Industrial Welfare Comm'n,* 211 Cal. App. 2d 729, 28 Cal. Rptr. 238 (1963). Although it may not be a significant distinction, all of the above cases were decided under the Railway Labor Act, 45 U.S.C. §151 *et seq.* An important distinction, however, is that none of the cases dealt with a state's efforts to regulate a subject matter which Congress had specifically indicated they could regulate. The court also finds persuasive the distinction of the cases on their facts and the quality of state regulation involved as argued by the defendant in its supporting memoranda.

Based upon the foregoing, the court is not persuaded that the NLRA and its policies preempt the state regulation of pensions embodied in the Minnesota Pension Act. The court is not ruling on the validity of the Pension Act vis-a-vis any other law or constitutional provision since none has been presented to it. Plaintiffs' motion for summary judgment will be denied.

PRELIMINARY INJUNCTION

In the alternative, plaintiffs have moved for a preliminary injunction against the defendant. Plaintiffs have so moved on the same grounds as their request for summary judgment-preemption. Based on the analysis of the law recited above in denying plaintiffs' motion for summary judgment, the court concludes that plaintiffs have not shown a substantial probability of success at trial and thus plaintiffs' request for a preliminary injunction will also be denied. The foregoing recitation of facts and statement of law shall constitute the court's Findings of Fact and Conclusions of Law in accordance with Fed.R.Civ.P. 52(a).

Upon the foregoing,

IT IS ORDERED That defendant's motion to abstain be, and the same hereby is in all respects denied.

IT IS FURTHER ORDERED That plaintiffs' motion for an order granting summary judgment in favor of plaintiffs, and against defendant, on issues tendered in Count I of plaintiffs' Amended Complaint be, and the same hereby is in all respects denied.

IT IS FURTHER ORDERED That plaintiffs' motion for an order granting a preliminary injunction, upon the grounds set forth in Count I of the Amended Complaint, enjoining the defendant, his agents, representatives and employees, from assessing or certifying a pension funding charges against plaintiffs under the Minnesota Private Pension Act, Minn. Stat. Ch. 181B, and from taking or continuing to take any other action to enforce said statute against plaintiffs, pending a final determination of this cause by this court, be, and the same hereby is in all respects denied.

APPENDIX C

UNITED STATES COURT OF APPEALS
For The Eighth Circuit

No. 76-12266 September Term, 1976

White Motor Corporation and White Farm Equipment Company, Appellants,

vs.

E. I. Malone, Commissioner of Labor and Industry for the State of Minnesota, Appellee.

JUDGMENT

APPEAL FROM the United States District Court for the District of Minnesota

THIS CAUSE came on to be heard on the record from the United States District Court for the District of Minnesota and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court, that the judgment of the said District Court, in this cause, be, and the same is hereby, reversed.

And it is further ordered by this Court that this cause be and is hereby remanded to the said District Court for proceedings consistent with the opinion of this Court this day filed herein.

December 2, 1976.

A true copy.

Attest:

/s/ Robert C. Tucker
Clerk, U.S. Court of Appeals, 8th Circuit.

APPENDIX D

CHAPTER 181B
PRIVATE PENSION BENEFITS PROTECTION

181B.01 CITATION. Sections 181B.01 to 181B.-17 shall be known and may be cited as the "private pension benefits protection act".

181B.02 DEFINITIONS. Subdivision 1. As used in sections 181B.01 to 181B.17, the following terms shall have the meanings given.

Subd. 2. "Employer" means any person, firm or corporation who employs 100 or more people at least one of whom is employed in this state at any time within one year prior to the date that it ceases to operate a place of employment or a pension plan or such longer period as may be prescribed by the commissioner pursuant to section 181B.14.

Subd. 3. "Place of employment" means any location within this state at which an employer employs any employees at any time within one year prior to the date that the employer ceases to operate at such location or such longer period as may be prescribed by the commissioner pursuant to section 181B.14.

Subd. 4. "Employee" means any person employed at the place of employment at any time within one year prior to the date when the employer ceases to operate the place of employment or a pension plan or such longer period as may be prescribed by the commissioner pursuant to section 181B.14. "Employee" also means any person who is not employed by the employer but who was formerly employed in this state, and is eligible or will be eligible without the earning of additional pension credits to receive a pension benefit from the employer's pension plan.

Subd. 5. "Commissioner" means the commissioner of labor and industry.

Subd. 6. "Ceases to operate a place of employment or a pension plan" means:

(a) The complete termination of operations at a place of employment, or

(b) A substantial reduction in the number of employees at a place of employment, or

(c) The termination or substantial reduction of pension plan operations or benefits for all or a portion of an employer's employees.

The term shall not mean any temporary cessation of operations or reduction of employees. Neither shall the term mean any cessation of operations by a single employer who participates in a pension plan to which more than one employer makes contributions if such cessation does not also entail the termination of the master pension plan. In determining whether any reduction has been substantial the commissioner shall take into consideration not only the absolute size of the reduction but the relative size of the reduction as it relates to the corporate and employment history of the group or subgroup suffering the reduction. In addition, the commissioner may find that a number of unsubstantial reductions are, for the purposes of sections 181B.01 to 181B.17, equivalent to a substantial reduction. When an employer ceases to operate a place of employment or a pension plan but offers to retain without loss of pension credit all of the employees in comparable jobs with equal or increased compensation at another location within the state or at some other location outside this state as specified in any voluntary agreement authorized by section 181B.10, sections 181B.01 to 181B.17 shall not apply except as it affects persons not employed by the employer but who are eligible or will be eligible without the earning of additional pension credits to receive the pension benefits from the employer's pension plan.

Subd. 7. "Pension plan" means any plan, fund or program which is established, maintained or entered into by an employer for the purpose of providing retirement benefits for its employees, or their beneficiaries and which is designated as a qualified pension plan under section 401 of the United States Internal Revenue Code of 1954 as amended, but does not mean any plan established by collective bargaining agreement which is excluded from the coverage of 29 U.S.C. 186(c) (5) (B) by 29 U.S.C. 186(g) and for which the employer has no administrative responsibility and no responsibility for the establishment of the retirement benefit schedule. Sections 181B.01 to 181B.-17 shall not apply to any retirement fund or program providing benefits only for public employees of the federal government or the state government or a subdivision of the state, nor shall it apply to any pension plan established on behalf of a religious, charitable, or educational organization as defined by Section 501(c) (3) of the United States Internal Revenue Code of 1954 as amended. Further, sections 181B.01 to 181B.17 shall not apply to any money purchase, profit sharing, or stock bonus plan in which no definitely determinable level of benefits is stipulated to be given to qualified plan participants at normal retirement age or some other age.

Subd. 8. "Normal retirement benefit" means that benefit payable under a pension plan in the event of retirement at the normal retirement age.

Subd. 9. "Normal retirement age" means the lesser of either the normal retirement age as prescribed by the pension plan or age 65.

Subd. 10 "Accrued portion of the normal retirement

benefit" with respect to employees of ten or more years of covered service means the larger of either the present value of the pension benefit which the employee has earned prior to cessation under the terms of the pension plan itself or the present value of the normal retirement benefit to which the employee would be entitled under the plan as in effect on the date of the cessation if he continued to earn pension credits based on the covered service he would have accumulated had he continued as a plan participant until normal retirement age or if he continued to earn annually until normal retirement age the same rate of compensation as that which he had been earning prior to cessation, upon which his pension credit would have been computed under the plan at the rate specified by the plan for the years subsequent to the cessation, multiplied by a fraction not to exceed one, the numerator of which is the total number of his years of covered service as of the date of cessation, and the denominator plan as of normal retirement age if he had continued to be an active participant in the plan until attaining such age.

With respect to employees with less than ten years of covered service, the defining term means the present value of the total amount of pension benefits which have been vested on or prior to the date of cessation. Where the above formulas are inapplicable or inequitable the defined term means that portion of the normal retirement benefit to which the commissioner determines actuarially the employee should be entitled based on the covered service of the employee, as of the date of the cessation.

Subd. 11. "Covered service" means the longer of either:

(a) The period of employment with an employer including predecessor employers as allowed in section 181B.07, clause (1) which is recognized under the terms of the employer's pension plan for the purposes of determining either an employee's eligibility to receive benefits under the plan or the amount of such benefits, or

(b) The amount of time after institution of the present pension plan or any substantially similar predecessor plan that an employee has been continuously employed in a full time capacity by an employer including predecessor employers as allowed in Section 181B.07, clause (1) prior to the cessation of operations. Temporary and seasonal layoffs and unpaid vacations and leaves of absence need not be credited as covered service but neither shall they serve to interrupt an employee's continuity of service. Part time employment may be credited as covered service if the commissioner determines that a previous full time employee has been reduced to part time status as part of a plan to evade provisions of sections 181B.01 to 181B.17.

Subd. 12. "Vested right" means a legal right obtained by an employee participating in a pension plan to that part of an immediate or deferred pension benefit which arises from the employee's covered service under the plan and is no longer contingent on the employee remaining covered under the plan.

Subd. 13. "Vested pension benefit" means that accrued portion of the normal retirement benefit of an employee

participating, or who has participated, in a pension plan to which the employee has a vested right.

Subd. 14. "Nonvested pension benefit" means the accrued portion of the normal retirement benefit of an employee participating in a pension plan to which the employee does not have a vested right.

Subd. 15. "Present value of the total amount of nonvested pension benefits" means that sum of money which if earning interest in a secure investment from the date of cessation of operations onward would equal the value of the nonvested pension benefit on the date on which the plan participant reached normal retirement age.

Subd. 16. "Present value of the total amount of vested pension benefits" means that sum of money which if earning interest in a secure investment from the date of cessation of operations onward would equal the value of the vested pension benefit on the date on which the plan participant reached normal retirement age minus that sum of money which is set aside in trust or exclusively reserved to finance pension benefits for plan participants.

Subd. 17. "Present value of the normal retirement benefit" means that sum of money which if earning interest in a secure investment from the date of the cessation of operations onward would equal the value of the normal retirement benefit on the date on which the plan participant reached normal retirement age.

181B.03 PENSION REFUNDING CHARGE, VESTED BENEFITS PRIOR TO PENSION BENEFITS PROTECTION ACT. Every employer who hereafter ceases to operate a place of employment or a pension plan

within this state shall owe to his employees covered by sections 181B.01 to 181B.17 a pension funding charge which shall be equal to the present value of the total amount of vested pension benefits based upon covered service occurring before April 10, 1974 of such employees of the employer who have completed ten or more years of any covered service under the pension plan of the employer and whose vested pension benefits have been or will be forfeited because of the employer's ceasing to operate a place of employment or a pension plan, less the amount of such vested pension benefits which are compromised or settled to the satisfaction of the commissioner as provided in sections 181B.01 to 181B.17.

181B.04 NONVESTED BENEFITS PRIOR TO ACT. Every employer who hereafter ceases to operate a place of employment or a pension plan within this state shall owe to his employees covered by sections 181B.01 to 181B.17 a pension funding charge which shall be equal to the present value of the total amount of nonvested pension benefits based upon service occurring before April 10, 1974 of such employees of the employer who have completed ten or more years of any covered service under the pension plan of the employer and whose nonvested pension benefits have been or will be forfeited because of the employer's ceasing to operate a place of employment or a pension plan, less the amount of such nonvested pension benefits which are compromised or settled to the satisfaction of the commissioner as provided in sections 181B.-01 to 181B.17.

181B.05 VESTED BENEFITS UNDER ACT. Every employer who hereafter ceases to operate a place of employment or a pension plan within this state shall

owe to his employees covered by sections 181B.01 to 181B.17 a pension funding charge which shall be equal to the present value of the total amount of vested pension benefits based upon covered service occurring after April 10, 1974 of such employees of the employer who have completed ten or more years of any covered service under the pension plan of the employer and whose vested pension benefits have been or will be forfeited because of the employer's ceasing to operate a place of employment or a pension plan, less the amount of such vested pension benefits which are compromised or settled to the satisfaction of the commissioner as provided in sections 181B.01 to 181B.17.

181B.06 NONVESTED BENEFITS UNDER ACT. Every employer who hereafter ceases to operate a place of employment or a pension plan within this state shall owe to his employees covered by sections 181B.01 to 181B.17 a pension funding charge which shall be equal to the present value of the total amount of nonvested pension benefits based upon covered service occurring after April 10, 1974, of such employees of the employer who have completed ten or more years of any covered service under the pension plan of the employer and whose nonvested pension benefits have been or will be forfeited because of the employer's ceasing to operate a place of employment or a pension plan, less the amount of such nonvested pension benefits which are compromised or settled to the satisfaction of the commissioner as provided in sections 181B.01 to 181B.17.

181B.07 EXCEPTIONS TO PENSION FUNDING REQUIREMENTS. An employer shall not be liable for any pension funding charge under sections 181B.03 to

181B.06 when (1) the employer ceases to operate a place of employment or a pension plan as a result of merger, consolidation, or acquisition of assets, if the successor to the employer continues the pension plan of the employer or establishes a comparable pension plan which covers all previously covered employees of the employer with no reduction in credited covered service for purposes of sections 181B.01 to 181B.17 and no reduction in the value of the pension credits already earned by the employees; or (2) the employer ceasing to operate a place of employment or a pension plan has (a) in each of the five years prior to cessation made a contribution to the pension plan at least equal to the maximum contribution which would have been exempt from income taxation under Section 404 of the United States Internal Revenue Code of 1954 as amended, or (b) in at least eight of the ten years immediately prior to cessation made a contribution to the pension plan at least equal to the maximum contribution which would have been exempt from income taxation under Section 404 of the United States Internal Revenue Code of 1954 as amended, or (c) when the pension plan has been instituted less than five years prior to cessation, in every year since the institution of the plan, made a contribution to the pension plan at least equal to the maximum contribution which would have been exempt from income taxation under Section 404 of the United States Internal Revenue Code of 1954 as amended.

181B.08 NOTICE OF INTENTION TO CEASE OPERATIONS. Any employer who intends to cease to operate a place of employment or a pension plan within this state shall notify the commissioner of such intention not later than six months prior to the date the employer

intends to cease such operation. In the case of an employer who intends to cease to operate a place of employment or a pension plan within this state within six months of April 10, 1974, the notice required by this section shall be given by the employer as soon as practicable, but not later than ten days after April 10, 1974.

181B.09 INVESTIGATION BY COMMISSIONER. Upon receipt of such notification, or upon his own initiative when such notification is not given as required, the commissioner shall cause an investigation to be made of the employer to determine the number of employees who have completed ten or more years of covered service under the pension plan of the employer and whose nonvested or vested pension benefits have been or will be forfeited by such cessation, the number of employees whose vested pension benefits have been or will be forfeited by such cessation, the number of employees whose vested pension benefits have been or will be forfeited by such cessation, the amounts of such nonvested or vested pension benefits, if any, of such employees and the pension plan for such employees as may be necessary or useful to the commissioner to carry out his duties and responsibilities under sections 181B.01 to 181B.17. The investigation, insofar as practicable, shall be conducted at the employer's place of business during normal business hours. The employer shall cooperate fully with the commissioner in such investigation, and shall make available to him any books, records or other information necessary or useful to such investigation. To aid in such investigations, the commissioner is authorized to administer oaths and affirmations and to issue subpoenas to compel the attendance of witnesses or the production of books, records or other documents. The commissioner may seek,

through the attorney general acting on his behalf, orders from any court of competent jurisdiction to compel an employer to comply with the provisions of sections 181B.01 to 181B.17 and to punish disobedience of any subpoena issued pursuant to sections 181B.01 to 181B.17.

181B.10 DETERMINATION OF AMOUNT OF BENEFITS; AGREEMENTS AS TO BENEFITS. As part of the investigation of an employer, the commissioner shall determine the amount of nonvested and vested pension benefits which have been compromised or settled to his satisfaction. Nonvested and vested pension benefits may be compromised or settled by voluntary agreement between the employer and individual employees which is mutually understood by both parties to be a complete and final satisfaction of the employer's obligations regarding such benefits, provided that both parties are made fully aware of their rights and obligations under section 181B.-01 to 181B.17 prior to the making of such voluntary agreement. Before any such settlement can be made it must be approved by the commissioner. The commissioner shall not approve any settlement that is not fair and equitable. Further, for all settlements entered into by the employer the relationship between the present value of the compromised pension credits and the value of the settlement must be as constant as is practicable.

181B.11 CERTIFICATION OF AMOUNTS AVAILABLE. After the investigation of the employer the commissioner shall certify to the employer the present value of the total amount of nonvested and vested pension benefits which are includable in determining an employer's pension funding charge liability under sections 181B.01 to

181B.17 and the amount of such benefits which have been compromised or settled to the satisfaction of the commissioner. When the assets of an employer available for distribution under sections 181B.01 to 181B.17 are less than the sum total of the pension funding charges owed to employees as calculated by the commissioner, the commissioner shall calculate the proportion of available assets owned to each employee so that the actual amount to be received by any covered employee at normal retirement age divided by the amount that employee would have received at normal retirement age had there been no shortage of assets available for distribution under sections 181B.01 to 181B.17 is a ratio as constant as is possible from employee to employee. In seeking to keep such ratio constant the commissioner shall consider the amounts to be received by an employee from trust fund assets set aside for employee pension benefits but unavailable for distribution under sections 181B.01 to 181B.17. The amount certified by the commissioner shall be due and payable to the employees in the manner specified in section 181B.-12 on the date that the employer ceases to operate its place of employment or a pension plan and shall be a lien upon the employer's assets. If the pension funding charge is not paid when due, the employer shall be liable for interest on the amount due at the rate of eight percent per annum until the charge and interest are paid, and the attorney general of this state shall bring action in an appropriate district court of this state or in the courts of another state or in an appropriate federal court as provided for in section 181B.13.

181B.12 PURCHASE OF PREPAID DEFERRED ANNUITY. The amount certified by the commissioner as

due and payable to the employees shall be paid to the employees by the employer through the purchase of a prepaid deferred annuity payable to the employee when he reaches normal retirement age or to his beneficiary upon the employee's death. Such purchase shall be made through a trust authorized by the United States Internal Revenue Service to make such purchases in a manner which exempts from federal income taxation the money used to purchase the annuity and all income earned by such annuity up to the date of the distribution of the annuity amount. In no event shall the amount of annuity to be distributed at normal retirement age exceed the amount of the accrued normal retirement benefit.

181B.13 RECOVERY OF AMOUNTS DUE. The commissioner shall maintain a separate record of each employee owed a pension funding charge under section 181B.01 to 181B.17. Ten days after any pension funding charge is due the commissioner shall tabulate all unpaid amounts and certify that figure to the attorney general who shall immediately take appropriate legal action as authorized in section 181B.11 on behalf of all aggrieved employees in a class action suit.

181B.14 ACTS CONSTITUTING TERMINATION. For the purposes of sections 181B.01 to 181B.17, the employment of any employee involuntarily terminated within one year of the date an employer ceases to operate a place of employment or a pension plan within this state, or within such longer period as prescribed by the commissioner when he determines that an employer is attempting to evade the provisions of sections 181B.01 to 181B.17, shall be deemed to have been terminated because of the employer's ceasing to operate its place of employment or

a pension plan, unless the employer can conclusively show that the termination was attributable to some other cause.

181B.15 RULES AND REGULATIONS. The commissioner may promulgate rules and regulations to provide for the efficient administration of the provisions of sections 181B.01 to 181B.17, or to clarify such provisions as may be necessary to effectuate the purposes of sections 181B.01 to 181B.17, and may from time to time specify any appropriate actuarial assumptions necessary to effectuate the purposes of sections 181B.01 to 181B.17.

181B.16 PROTECTION OF FUNDS FROM EXECUTION OR PROCESS. The funds of any employer which are set aside or reserved for benefits under a pension plan of the employer to which employees have a vested right shall not be liable to levy or attachment by virtue of any execution or civil process whatever, issued out of any court of this state, for the collection of the pension funding charge imposed by sections 181B.01 to 181B.17.

181B.17 EFFECTIVE DATE; EFFECT OF FEDERAL ACT IN AREA. Sections 181B.01 to 181B.17 shall take effect the day following final passage. Provided that sections 181B.01 to 181B.17 shall become null and void upon the institution of a mandatory plan of termination insurance guaranteeing the payment of a substantial portion of an employee's vested pension benefits pursuant to any law of the United States.

APPENDIX E

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 76-1266

White Motor Corporation and White Farm Equipment Company,

Appellees,

vs.

E. I. Malone, Commissioner of Labor and Industry for the State of Minnesota,

Appellants.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that E. I. Malone and the State of Minnesota, the above-named appellants, hereby appeal to the Supreme Court of the United States from the final judgment of the United States Court of Appeals for the Eighth Circuit filed and entered on December 2, 1976, reversing the judgment of the United States District Court for the District of Minnesota dated March 18, 1976.

This appeal is taken pursuant to 28 U.S.C. §1254(2).

Dated: December 7th, 1976.

STATE OF MINNESOTA
WARREN SPANNAUS
Attorney General
/s/ RICHARD B. ALLYN
Solicitor General
160 State Office Building
Saint Paul, Minnesota 55155
Telephone: (612) 296-2961
Attorneys for Appellants

In The

Supreme Court of the United States

OCTOBER TERM, 1977

No. 76-1184

E. I. MALONE, Commissioner of Labor and Industry for the State of Minnesota,

Appellant,

vs.

WHITE MOTOR CORPORATION and WHITE FARM EQUIPMENT COMPANY,

Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Docketed February 26, 1977
Probable Jurisdiction Noted October 3, 1977

APPENDIX

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APPENDIX INDEX

RELEVANT DOCKET ENTRIES

Civ. 3-75-162: White Motor Corp. v. E. I. Malone, Com'r of Labor et al

5-15-75—Filed Complaint.
Filed Civil Cover Sheet.
Issued Summons.
Case Assigned to Judge Alsop, per card No. 178.

5-20-75—Filed Summons returned served 5-16-75.

6-6-75—Filed ANSWER, with cert. of serv. by mail 6-5-75.

7-28-75—Filed Consent to Amendment of Complaint and Acknowledgment of Service of Amended Complaint, Amended Complaint attached.

Filed Pltf's Notice of Motion and Motion for Pre-Trial Conference. Noticed for hearing at St. Paul, Aug. 8, 1975 at 9:30 A.M. Aff. of serv. by mail 7-25-75 attached.

8-5-75—Filed AMENDED ANSWER. Aff. of serv. by mail 8-4-75 attached.

9-4-75—Filed copy of Order (Devitt-J; 9-4-75) of Direction to the Clerk of Court that Civ. Case No. 3-75-178 is hereby assigned to Judge Alsop, it being a companion case to Civ. 3-75-162.

9-29-75—Filed Pltf's Notice of Motion and Motion for an Order granting summary judgment in favor of Pltfs, with aff. of H. Herbert Phillips and Exhibits attached; returnable 11-21-75 at 9:30 A.M. in St. Paul.

11-13-75—Filed Deft. E. I. Malone's Notice and Motion To Stay Or Dismiss. Noticed for hearing November 21, 1975 at 9:30 A.M. before Judge Alsop at St. Paul. Aff. of serv. by mail 11-10-75 attached.

11-18-75—Filed Affidavit of Stanley A. Enebo.
Filed Affidavit of Jon K. Murphy.

Filed Affidavit of Alfred H. Behrendt.
Filed Affidavit of Spencer Westerberg.
Filed Affidavit of Charles G. Dapper.
Filed Affidavit of Clarence Grose.
Filed Affidavit of Roy G. Pierce.
Filed Affidavit of William E. Peters.
Filed Affidavit of Emanuel Walstrom.
Filed Affidavit of William Preston.
Filed Affidavit of Mildred MacDonald.
Filed Affdiavit of Donald W. Duffy.

Filed Certificate of Personal service on the above affidavits dated 11-17-75.

11-17-75—Filed Plaintiffs' Memorandum of Law In Opposition To Defendant's Motion To Dismiss Or Stay (Filed at counsel's request—who delivered original to J. Devitt).

11-25-75—Filed Copy of Record of hearing on Motion of Pltffs for summary judgment or in the alternative for a preliminary injunction heard 11-21-75 at Minneapolis: Argued, submitted and taken under advisement. Mr. Roy to submit responsive brief by 12-5-75 (12-12-75) Mr. Gerlach to reply 10 days after receipt of Mr. Roy's Brief on (the question whether the court on its own motion can convene a 3 Judge court) (Alsop-J) (Lindberg-Reporter).

12-3-75—Filed Reporter's Transcript of hearing on Motion November 21, 1975. (Lindberg-Reporter)

1-15-76—MINUTES OF PROCEEDINGS (Alsop, J.) Conference only.

3-19-76—ORDER & MEMORANDUM (Alsop, J; 3-18-76) that defendant's motion to abstain is in all respects denied; that plaintiffs' motion for an order granting summary judgment in favor of plaintiffs and against defendant, on issues tendered in Count I of plaintiffs' amended complaint is in all respects denied; that plaintiffs' motion for an order granting a preliminary injunction, upon the grounds set forth in Count I of the amended complaint, enjoining the defendant, his agents, representatives and employees, from assessing or certifying a pension funding charge against pltfs. under Minn. Priv. Pension Act, M.S. 181B, and from taking or continuing to take any other action to enforce said statute against pltfs. pending final determination of this cause by this court, is in all respects denied. Copies of Order mailed to counsel. (local).

3-23-76—NOTICE OF APPEAL BY Pltffs. from Order entered March 18, 1976 in which District Court inter alia overruled the Pltffs' Motion for a Preliminary injunction.

UNDERTAKING FOR COSTS $250.00 United Pacific Insurance Company.

Mailed two cert. copies of Notice of Appeal, two cert. copies of Memorandum and Order filed 3-19-76, and two cert. copies of Docket Entries herein with covering letter to Robert C. Tucker, Clerk, U. S. Court of Appeals For the Eighth Circuit, U.S. Court House, St. Louis, Missouri 63101.

NOTICE TO COUNSEL with copy of Notice of Appeal.

4-16-76—PLTFF'S NOTICE OF MOTION AT A TIME AND PLACE TO BE DETERMINED BY COURT, will move for Order amending Order dated March 18, 1976. Aff. of serv. 4-15-76. Memorandum In Support of Pltffs' Motion For An Order Under 28 USC. 1292(b) delivered to Court.

12-2-76—ORDER & MEMORANDUM OF COURT OF APPEALS, reversing Order of District Court and ruling that Minnesota Pension Act is preempted.

12-7-76—NOTICE OF APPEAL filed with Court of Appeals.

2-26-77—DOCKETING OF APPEAL by United States Supreme Court.

10-3-77—PROBABLE JURISDICTION NOTED.

AMENDED COMPLAINT

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

3-75-162

WHITE MOTOR CORPORATION
and
WHITE FARM EQUIPMENT COMPANY,
Plaintiffs,

vs.

E. I. MALONE, Commissioner of Labor and Industry for the State of Minnesota,
Defendant.

AMENDED COMPLAINT

Plaintiffs, White Motor Corporation and White Farm Equipment Company, for their Amended Complaint against the Defendant, allege:

JURISDICTION

1. The jurisdiction of this Court over this action is founded upon 28 U.S.C. §§ 1331 and 1332, and upon 28 U.S.C. §§ 2201-2202 (the Federal Declaratory Judgment Act). In Counts I, II, III, IV and V of the Amended Complaint, Plaintiffs challenge the constitutionality of the "Private Pension Benefits Protection Act" (Laws of Minnesota, 1974, Ch. 437; coded as Minn. Stat., 1974 §§ 181B.01-181B.17), the ground of such challenge being that such statute (hereafter referred to as "the Minnesota Pension Act") violates the United States Constitution. In Counts VI, VII and VIII Plaintiffs challenge the Minnesota Pension Act on the ground that such statute violates the Minnesota Constitution. This Court has jurisdiction over the cause of action alleged in such Counts by virtue of its pendent and ancillary jurisdiction. The amount in controversy exceeds Ten Thousand Dollars ($10,000) exclusive of interest and costs. Venue is proper by virtue of 28 U.S.C. § 1391(b).

COUNT I

2. Plaintiff White Motor Corporation (hereinafter referred to as "White Motor") is a corporation which is incorporated under the laws of the State of Ohio and which has its principal place of business in Cleveland, in the State of Ohio.

3. Plaintiff White Farm Equipment Company (hereinafter referred to as "White Farm") is a corporation which is incorporated under the laws of the State of Delaware and which has its principal place of business in Oakbrook, in the State of Illinois. White Farm is, and at all times referred to herein was, a wholly owned subsidiary of White Motor.

4. Defendant E. I. Malone (hereinafter referred to as "Malone") is the Commissioner of Labor and Industry of the State of Minnesota, his official residence being in St. Paul, in the State of Minnesota. As Commissioner of Labor and Industry, Malone is charged with the enforcement of the Minnesota Pension Act.

5. White Farm is, and at all times referred to herein was, engaged in the manufacture and sale, in interstate commerce, of farm equipment and machinery, maintaining large facilities in Hopkins, Minnesota, South Bend, Indiana, and Charles City, Iowa. In operating the Hopkins, Minnesota facility, White Farm regularly and necessarily obtains and receives equipment, tools, and supplies from various states of the United States outside of Minnesota which are shipped across state

lines and interstate commerce to White Farm's Hopkins facility. White Farm regularly and necessarily uses the interstate mails, other interstate communications systems and interstate transportation systems in operating the Hopkins facility. White Farm's Hopkins operations are substantial, its gross sales for the year 1974 being in excess of $66,000,000. White Farm's operations in South Bend, Indiana and Charles City, Iowa are similar in nature, extent, and involvement in interstate commerce. Until approximately June 1972, White Farm also operated a facility in Minneapolis, Minnesota, which had a substantial impact on, and involvement in, interstate commerce.

6. White Motor is, and at all times referred to herein was, engaged in the manufacture and sale, in interstate commerce, of motor trucks and motor truck parts, maintaining its principal office in Cleveland, Ohio, and manufacturing plants in the States of Ohio, Pennsylvania and Utah. In operating said plants, White Motor regularly obtains and receives equipment, raw materials, tools and supplies from various states of the United States which are shipped across state lines in interstate commerce to White Motor's various plants. White Motor regularly and necessarily uses the interstate mails, other interstate communications systems and interstate transportation systems in operating its plants and facilities. White Motor's operations are substantial, its gross sales for the year 1974 totaling approximately $1,390,000,000.

7. Effective May 1, 1971, White Farm and the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, and its local unions (hereafter collectively referred to as the "UAW") entered into collective bargaining agreements covering the terms and conditions of employment of White Farm employees at White Farm's

Minneapolis and Hopkins, Minnesota facilities. As part of those collective bargaining agreements, White Farm and the UAW agreed to a Pension Agreement and Plan (hereinafter referred to as "the Pension Plan"), covering White Farm employees. A copy of the Pension Plan is attached hereto as Exhibit A and made a part hereof. In connection with the negotiation of the collective bargaining agreements, White Farm and White Motor entered into a written "Pension Guarantee", (hereinafter referred to as "Pension Guarantee"), pertaining to the Pension Plan and setting forth certain conditions to be met in the event there should be a closing of the White Farm plants in Minneapolis and Hopkins, Minnesota and a resulting termination of the Pension Plan.

8. Effective April 10, 1974, the State of Minnesota adopted the Minnesota Pension Act referred to in paragraph 1 of this Amended Complaint, which Act purports to establish, in the event of the termination of pension plans pertaining to certain Minnesota employers and employees, certain charges and liabilities against the employers and in favor of the employees irrespective of the terms and conditions of the affected pension plans, including pension plans established through the process of collective bargaining.

9. On or about June 30, 1972, White Farm closed its Minneapolis facility. At that time (June 30, 1972) White Farm terminated the Pension Plan. Arbitration and court litigation concerning said termination thereafter ensued between the UAW and White Farm and White Motor. On or about August 30, 1973, an arbitration award was entered ruling that the Pension Plan could not be effectively terminated prior to May 1, 1974, which arbitration award was thereafter confirmed in court litigation testing the award. By reason of such arbitration award, White Farm, after the award, took action again

to terminate the Pension Plan, and said Pension Plan was thereby terminated, at the latest, on May 1, 1974.

10. On December 22, 1972, following the closing of the Lake Street facility, White Farm and the UAW entered into a Final Closing Agreement. That Final Closing Agreement provided, *inter alia*, for the payment by White Farm of a specified sum of money into a Supplemental Unemployment Benefits Fund; for the payment of severance pay from that Fund to employees whose employment was terminated as a result of the closing of the Lake Street facility; and for the settlement of all grievances, except those grievances which were submitted to arbitration in the proceedings referred to in paragraph 9 of this Amended Complaint. The Final Closing Agreement further provided:

> "Moreover, [this Final Closing Agreement] expresses all obligations, both legal and financial, of the Company to the Union and/or any employee arising out of the closing of the Lake Street facility."

The Final Closing Agreement further provided:

> "The parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining, and that the understandings and agreements arrived at by the parties after the exercise of that right an [sic] opportunity are set forth in this Agreement."

11. Defendant Malone and the Minnesota Department of Labor and Industry, asserting that the termination of the Pension Plan is subject to the Minnesota Pension Act, have declared their intention to take action to enforce the Minnesota Pension Act against Plaintiffs in respect of said termination.

Since September 1974, Defendant Malone and the Minnesota Department of Labor and Industry have required and demanded that Plaintiffs furnish documentary and other information of a kind required under the Minnesota Pension Act. Enforcement of the Minnesota Pension Act, which Plaintiffs allege is unconstitutional, will result in Malone and the Minnesota Department of Labor and Industry requiring Plaintiffs, as a result of their termination of the Pension Plan, to incur charges and liabilities under said Act in favor of White Farm's employees which will total many millions of dollars more than the charges and liabilities provided for under the Pension Plan and Pension Guarantee.

12. In January 1975, Plaintiffs and the UAW entered into a Memorandum of Agreement for the settlement of their differences concerning the termination of the Pension Plan and the termination of the litigation relating thereto. On information and belief, Plaintiffs allege that such Memorandum of Agreement was ratified and approved by a vote of the UAW membership. Because of the continuing assertion by Malone and the Minnesota Department of Labor and Industry of their intention to enforce the Minnesota Pension Act with respect to the termination of the Pension Plan, that Memorandum of Agreement was submitted to Malone for his approval. On May 12, 1975, Malone stated his disapproval of the settlement embodied in the Memorandum of Agreement, and stated his intention to take further action to enforce the Minnesota Pension Act against Plaintiffs.

13. The Minnesota Pension Act is unconstitutional as violative of the Supremacy Clause of Article VI of the United States Constitution in that it is in conflict with the provisions and policies of §§ 1, 7, 8(a)(5), 8(b)(3) and 8(d) of the National Labor Relations Act, as amended, 29 U.S.C., §§ 151, 157,

158(a)(5), 158(b)(3) and 158(d), and is preempted by such federal law. The Minnesota Pension Act unconstitutionally interferes with the right of Plaintiffs to free collective bargaining under federal law and constitutionally vitiates collective bargaining agreements entered into under the authority of federal law, by imposing upon Plaintiffs obligations which, by the express terms of such collective bargaining agreements, Plaintiffs were not required to assume.

COUNT II

14. For Count II of their Amended Complaint Plaintiffs repeat and reallege, as if set forth fully herein, all of the allegations hereinbefore set forth in paragraphs 2 through 12 of the Amended Complaint.

15. The Minnesota Pension Act is unconstitutional as violative of the provision of Article I, Section 10, Clause 1 of the United States Constitution which prohibits any state from passing any "law impairing the obligation of contracts". The Minnesota Pension Act, through the pension funding charge imposed thereunder, unconstitutionally changes and increases the obligation of Plaintiffs upon the termination of the Pension Plan in a manner directly contrary to the contractual terms of the Pension Plan and/or Pension Guarantee.

COUNT III

16. For Count III of their Amended Complaint, Plaintiffs repeat and reallege, as if set forth fully herein, all of the allegations set forth in paragraphs 2 through 12 of the Amended Complaint.

17. The Minnesota Pension Act is unconstitutional as violative of the Due Process Clause of the Fourteenth Amendment of the United States Constitution. The Minnesota Pension Act imposes upon employers, including Plaintiffs, an arbitrary and unreasonable penalty and charge in respect of

the termination of pension plans, appropriates the property of such employers without due process of law, and is otherwise violative of due process as guaranteed under the Fourteenth Amendment to the United States Constitution.

COUNT IV

18. For Count IV of their Amended Complaint, Plaintiffs repeat and reallege, as if set forth fully herein, all of the allegations set forth in paragraphs 2 through 12 of the Amended Complaint.

19. The Minnesota Pension Act is unconstitutional as violative of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. The Minnesota Pension Act sets up wholly unreasonable classifications with respect to the coverage and reach of its provisions, imposes its penalty and charge upon only certain employers, including Plaintiffs, while insulating other employers from it, makes only certain employees, including those covered by the Pension Plan, the beneficiaries of such penalty and charge while depriving other employees of such benefits, and is otherwise violative of the right to equal protection of the laws as guaranteed under the Fourteenth Amendment to the United States Constitution.

COUNT V

20. For Count V of their Amended Complaint, Plaintiffs repeat and reallege, as if set forth fully herein, all of the allegations hereinbefore set forth in paragraphs 2 through 12 of the Amended Complaint.

21. The Minnesota Pension Act is unconstitutional as violative of the Commerce Clause, Article I, Section 8, Clause 3 of the United States Constitution. The Minnesota Pension Act imposes an unconstitutional burden on interstate commerce by prescribing a substantial penalty upon affected employers

desiring to discontinue activity within the State of Minnesota and is otherwise violative of Article I, Section 8, Clause 3 of the United States Constitution.

COUNT VI

22. For Count VI of their Amended Complaint, Plaintiffs repeat and reallege, as if set forth fully herein, all of the allegations set forth in paragraphs 2 through 12, and paragraph 15, of the Amended Complaint.

23. By reason of the allegations set forth hereinbefore in the Amended Complaint, and particularly those set forth in paragraph 15 of the Amended Complaint, the Minnesota Pension Act, in addition to being unconstitutional under the United States Constitution, violates the prohibition in Article I, Section 11 of the Minnesota Constitution against the passage by the Minnesota State legislature of any "law impairing the obligation of contracts".

COUNT VII

24. For Count VII of their Amended Complaint, Plaintiffs repeat and reallege, as if set forth fully herein, all of the allegations set forth in paragraphs 2 through 12, and paragraph 17, of the Amended Complaint.

25. By reason of the allegations set forth hereinbefore in the Amended Complaint, and particularly those set forth in paragraph 17 of the Amended Complaint, the Minnesota Pension Act, in addition to being unconstitutional under the United States Constitution, violates the provisions of Article I, Section 7 of the Minnesota Constitution guaranteeing the right of due process.

COUNT VIII

26. For Count VIII of their Amended Complaint, Plaintiffs repeat and reallege, as if set forth fully herein, all of the

allegations set forth in paragraphs 2 through 12 of the Amended Complaint.

27. The Minnesota Pension Act, in addition to being unconstitutional under the United States Constitution, violates the provisions of Article III, Section 1 of the Minnesota Constitution requiring and providing for the separation of powers among the various branches of the Minnesota State government, and unconstitutionally delegates the legislative power of the legislative branch of the Minnesota State government to the executive branch of said government, and particularly the Minnesota Department of Labor and Industry and its Commissioner, defendant Malone.

WHEREFORE, Plaintiffs pray for the following relief with respect to each Count of the Amended Complaint:

1. A declaration that the Minnesota Pension Act is unconstitutional under the provisions of the United States and Minnesota Constitutions;

2. Judgment for their costs herein; and

3. Such other and further relief as shall seem just and equitable to the Court in the premises.

Dated: July 24, 1975.

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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

Civil Action File No. 3-75-162

WHITE MOTOR CORPORATION, and
WHITE FARM EQUIPMENT COMPANY,
Plaintiffs,

vs.

E. I. MALONE, Commissioner of Labor and
Industry for the State of Minnesota,
Defendant.

AMENDED ANSWER

Defendant E. I. Malone, for his answer to plaintiffs' amended complaint herein, admits, denies, and alleges as follows:

1. Admits that the amount in controversy exceeds the sum of ten thousand dollars ($10,000), exclusive of interests and costs; alleges that the defendant is without knowledge or information sufficient to form a belief as to the truth of the re-

maining allegations relating either to jurisdiction or to venue; as to the remaining allegations contained in paragraph 1 of the amended complaint, alleges that they are not susceptible to responsive pleading.

2. Admits that plaintiff White Motor Corporation (hereinafter referred to as "White Motor") is a corporation which is incorporated under the laws of the State of Ohio; alleges that the defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 2 of the amended complaint.

3. Admits that plaintiff White Farm Equipment Company (hereinafter referred to as "White Farm") is a corporation which is incorporated under the laws of the State of Delaware; alleges that the defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 3 of the amended complaint.

4. Admits the allegations contained in paragraph 4 of the amended complaint.

5. Admits that plaintiff White Farm is, and at all times referred to in the amended complaint was, engaged in the manufacture and sale of farm equipment and machinery, that plaintiff White Farm maintains a facility in Hopkins, Minnesota, and that until approximately June, 1972, plaintiff White Farm operated a facility in Minneapolis, Minnesota; alleges that the defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 5 of the amended complaint.

6. Admits that plaintiff White Motor is, and at all times referred to in the amended complaint was, engaged in the manufacture and sale of motor trucks and motor truck parts; alleges that the defendant is without knowledge or information-

tion sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 6 of the amended complaint.

7. Admits that plaintiff White Farm and the UAW, as that term is used in the amended complaint, entered into a collective bargaining agreement, effective May 1, 1971, covering the terms and conditions of employment of plaintiff White Farm employees at said plaintiff's Minneapolis and Hopkins, Minnesota, facilities, that as part of that collective bargaining agreement, plaintiff White Farm and the UAW agreed to a Pension Agreement and Plan (hereinafter referred to as the "Pension Plan") covering said plaintiff's employees, and that plaintiffs entered into a Pension Guarantee setting forth certain conditions to be met in the event there should be a closing of the plants of plaintiff White Farm in Minneapolis and Hopkins, Minnesota, and a resulting termination of the Pension Plan; alleges that the defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 7 of the amended complaint.

8. Admits that the State of Minnesota has enacted a law entitled the Private Pension Benefits Protection Act, Minn. Stat. ch. 181B (1974) (hereinafter referred to as the "Minnesota Pension Act"), effective April 10, 1974; to the extent that the remaining allegations contained in paragraph 8 of the amended complaint attempt to explain and characterize the Minnesota Pension Act, defendant refers the Court to the official text thereof.

9. Denies that the Pension Plan was terminated on or about June 30, 1972; alleges that White Farm's attempt to terminate the Pension Plan at that time was ineffective; admits the remaining allegations contained in paragraph 9 of the amended complaint.

10. Alleges that defendant Malone is in possession of a document, referred to in its text as a "Final Closing Agreement," purportedly entered into by White Farm and the UAW and dated December 22, 1972. Assuming said document to be a true and accurate copy of the Final Closing Agreement referred to in paragraph 10 of the amended complaint: (a) defendant alleges that the Final Closing Agreement provided for the settlement of all grievances with the exception of "those grievances concerning pension matters specified and scheduled for arbitration December 19, and 20, 1972"; (b) defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation that the Final Closing Agreement provided for the settlement of all grievances except "those grievances which were submitted to arbitration in the proceedings referred to in paragraph 9 of [the] Amended Complaint"; and (c) defendant admits the remaining allegation contained in paragraph 10 of the amended complaint.

11. Alleges that the defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations concerning the effect upon plainntiffs of the enforcement of the Minnesota Pension Act on behalf of either active or retired employees of White Farm; admits the remaining allegations contained in paragraph 11 of the amended complaint.

12. Admits that in January, 1975, plaintiffs and the UAW entered into a Memorandum of Agreement and that said Memorandum of Agreement was submitted to defendant for his review and approval, that defendant reviewed said Memorandum of Agreement and by letter dated May 12, 1975, notified plaintiffs of his conclusions which included, *inter alia*, a qualified disapproval of the settlement embodied in said

Memorandum of Agreement, and that defendant stated his intention to take further action to enforce the Minnesota Pension Act against plaintiffs; alleges that defendant is without knowledge or information sufficient to form a belief as to the remaining allegations contained in paragraph 12 of the amended complaint.

13. Denies the allegations contained in paragraphs 13, 15, 17, 19, 21, 23, 25, and 27 of the amended complaint.

14. Denies each and every other allegation, matter, fact, and thing not expressly admitted, denied, or otherwise qualified hereinabove.

SEPARATE DEFENSES

15. Alleges that no judicial interpretations have been rendered as to the Minnesota Pension Act and that this Court should abstain from the hearing of this action.

16. Alleges that the amended complaint fails to state a claim upon which relief can be granted against defendant.

WHEREFORE, defendant prays that plaintiffs take nothing by their amended complaint, that plaintiffs' amended complaint be dismissed and that defendant be awarded his costs and disbursements herein.

Dated: August 4, 1975.

WARREN SPANNAUS
Attorney General
State of Minnesota
PETER W. SIPKINS
Solicitor General
By JAMES P. GERLACH
Special Assistant
Attorney General

And RICHARD S. SLOWES
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Saint Paul, Minnesota 55155
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Attorneys for Defendant

(Caption)

NOTICE OF MOTION

To The Above-named Defendant and His Attorneys:

PLEASE TAKE NOTICE that on the 21st day of November, 1975 at 9:30 A.M. or as soon thereafter as counsel can be heard, at the United States Courthouse, St. Paul, Minnesota, the above-named Plaintiffs will move the Court for an Order granting summary judgment in favor of Plaintiffs, and against Defendant, on issues tendered in Count I of Plaintiffs' Amended Complaint.

In the alternative, and if the foregoing motion for summary judgment is denied, Plaintiffs will move the Court, at the time and place specified above, for an Order granting a Preliminary Injunction, upon the grounds set forth in Count I of the Amended Complaint, enjoining the Defendant, his agents, representatives and employees, from assessing or certifying a pension funding charge against Plaintiffs under the Minnesota Private Pension Benefits Protection Act, Minn. Stat. Ch. 181B, and from taking or continuing to take any other action to enforce said statute against Plaintiffs, pending a final determination of this cause by this Court.

Such motions will be made on all of the files, records and

proceedings herein, upon the Affidavit of H. Herbert Phillips, and upon the Exhibits to the Phillips Affidavit.

September 29, 1975.

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(Caption)

AFFIDAVIT

State of Ohio
Cuyahoga County—ss.

H. HERBERT PHILLIPS, being first duly sworn, makes this Affidavit in support of Plaintiffs' Motion for Summary Judgment or in the alternative, for a Preliminary Injunction, and for this purpose deposes and says as follows:

1. He resides in Gates Mills, Ohio, which is a suburb of Cleveland, Ohio. He is and has been since August of 1971 Vice President, Personnel and Industrial Relations, of White Motor Corporation (White Motor) and in that capacity he has been and is in charge of collective bargaining with various unions representing employees in plants of White Motor and its subsidiaries throughout the country.

2. White Motor is a corporation incorporated under the laws of the State of Ohio, with its principal place of business in Cleveland in the State of Ohio. White Motor is and at all times referred to herein was engaged in the manufacture and sale, in interstate commerce, of trucks and motor truck parts. White Motor in 1974 had gross sales of approximately $1,390,000,000 and approximately 17,800 full time employees. Attached hereto as Exhibit 1 is a copy of White Motor's 1974 Annual Report in the form issued to its shareholders.

3. White Farm Equipment Company (White Farm) is a Delaware corporation with its principal place of business in Oakbrook, Illinois and is a wholly owned subsidiary of White Motor.

4. White Farm has a plant located at Hopkins, Minnesota which for the year 1974 had gross sales in excess of $38,-000,000 and approximately 285 employees. Until approximately June 1972 White Farm also operated a second plant in Min-

nesota on Lake Street, Minneapolis. In operating the Hopkins facility White Farm regularly obtains and receives equipment, tools and supplies from various states of the United States outside Minnesota which are shipped across state lines to Hopkins facility; and White Farm regularly uses the interstate mails, other interstate communication systems and interstate transportation systems in operating the Hopkins facility.

5. In 1962 White Motor organized a subsidiary, Minneapolis-Moline, Inc., which on January 1, 1963 acquired the assets of Motec Industries, Inc. (formerly called The Minneapolis-Moline Company) which had operated the plants in Minneapolis and Hopkins prior to January 1, 1963. In 1969 Minneapolis-Moline, Inc. changed its name to White Farm Equipment Company and operated these Motec plants and other plants.

6. Since July 6, 1955 the production, maintenance and clerical employees at the Minneapolis and Hopkins plants have been represented, for purposes of collective bargaining, by International Union, United Automobile, Aerospace and Agricultural Implement Workers of America and certain of its local unions (hereinafter collectively referred to as the "UAW"). From September 7, 1950 to 1955 such production, maintenance and clerical employees had been represented, for purposes of collective bargaining, by the United Electrical, Radio and Machine Workers of America.

7. After White Motor acquired Minneapolis-Moline in January 1963, pension benefits as a result of negotiations with the UAW rose at the following rates and average annual pensions increased as follows:

Year	Basic Benefit Rate and Maximum Years of Credited Service	Average Annual Pension Benefit
1963	$2.50 x years of service (Maximum 25 years)	$ 819
1964	$2.80 x years of service (Maximum 25 years)	819
1965	$2.89 x years of service (Maximum 25 years)	820
1966	$4.25 x years of service (Maximum 25 years)	1,437
1967	$4.25 x years of service (Maximum 30 years)	1,441
1968	$5.25 x years of service (Maximum 30 years)	1,816
1969	$5.25 x years of service (Maximum 30 years plus Supplemental Allowance)	1,868*
1970	$5.50, $5.75 and $6.00 x years of service (Maximum 33 years plus Supplemental Allowance)	2,100*
1971	Same as 1970	2,107*
1972	$6.50, $6.75 and $7.00 x years of service (Maximum 34 years plus Supplemental Allowance)	2,478

* Excluding Supplemental Allowances

8. Prior to 1968, there had been no provision in the pension plan negotiated with the UAW for these two Minnesota plants which required funding of unpaid past service liability under

the plan. In 1968, through contract negotiations with the UAW, the following section was added to the pension plan covering the Minnesota plants:

> "The unfunded net deficiency as of January 1, 1963, will be amortized over a thirty (30) year period from January 1, 1963. The deficiencies resulting from benefit increases effective May 1, 1966 and May 1, 1967, will be funded uniformly over a thirty-year period from May 1, 1966 and May 1, 1967 respectively. The deficiencies resulting from benefit increases as negotiated to become effective May 1, 1968 and thereafter will be funded uniformly over a thirty (30) year period commencing with the effective date of each such benefit."

9. In the 1971-72 negotiations, culminating in the amended Pension Agreement and Plan executed in January 1972, (sometimes hereinafter called the "Plan") the Union demanded an increased level of pension benefits, and, in return for the Company's agreement to increase benefits, agreed to substitute 35-year funding of past service liability for the 30-year funding requirement contained in the 1968 Pension Plan. Deferred funding of past service liability is a common feature of pension plans. At the time the White-UAW contracts were negotiated, the thirty and thirty-five year amortization periods were consistent with industry practice. This kind of trading to obtain a quid pro quo for a new commitment is common in collective bargaining. The provision concerning funding in the amended Plan, effective as of January 1, 1971, reads as follows:

> "The unfunded net deficiency as of January 1, 1971 shall be amortized over a thirty-five (35) year period from January 1, 1971. The deficiencies resulting from benefit increases effective January 1, 1972 and January 1, 1973

> shall be funded uniformly over a thirty-five (35) year period from January 1, 1972 and January 1, 1973, respectively."

10. When White Motor acquired Minneapolis-Moline in 1963, the Pension Fund for the Plan had assets of less than $500,000 and an unfunded past service liability of approximately $6,000,000. Since that time, the Company has made regular contributions to the Fund covering normal cost and amortization of past service liability. For example, contributions in 1963 totaled $528,000 and in 1971 totaled $1,225,269. The total contributions made by the Company to the Pension Fund under the Plan in the period from January 1, 1963 to September 1, 1975, were in excess of $10,200,000. From May 1, 1974 to September 1, 1975, Company contributions to the Pension Fund exceeded $2,000,000. During the period from January 1, 1963 to September 1, 1975 the total amounts of pension benefits disbursed from the Pension Fund were approximately $11,300,000. Of that amount, more than $2,300,000 in pension benefits have been paid to retirees since May 1, 1974.

11. In early 1972 the Minneapolis-Moline Division of White Farm and the UAW executed collective bargaining agreements covering production and maintenance and clerical employees at the Minneapolis and Hopkins plants for the period from May 1, 1971 to May 1, 1974. Exhibit 2, attached hereto, is a copy of one such agreement. Exhibit C to each such agreement incorporated a Pension Agreement and Plan (the Plan) originally agreed to in collective bargaining agreements entered into in 1950 and amended in subsequent labor negotiations, by the following language:

> "The parties hereto have agreed to a Pension Agreement and Plan, printed under separate cover, which is made a part of this agreement the same as if set forth at length herein."

12. Exhibit 3, attached hereto, is a copy of the Pension Agreement and Plan (the Plan) to which Exhibit "C" of the 1971-1974 collective bargaining agreement refers.

13. In language unchanged since 1950, the Plan (as amended in the 1971-72 collective bargaining negotiations with the UAW) provided for payment of pensions as follows:

"*Section 6.09—Source of Pensions*

Pensions shall be payable only from the Fund and rights to pensions shall be enforceable only against the Fund.

* * * *

"*Section 6.17—No Other Benefits*

No benefits other than those above specifically provided for are to be provided under this Plan. No employee shall have any vested right under the Plan prior to his retirement and then only to the extent specifically provided herein.

* * * *

"*Section 9.04—Rights of Employees in Fund*

No employee, participant or pensioner shall have any right to, or interest in, any part of any Trust Fund created hereunder, upon termination of employment or otherwise, except as provided under this Plan and only to the extent therein provided. All payments of benefits as provided for in this Plan shall be made only out of the Fund or Funds of the Plan and neither the Company nor any Trustee nor any Pension Committee or member thereof shall be liable therefor in any manner or to any extent."

14. The UAW recognized that the capacity of the Pension Plan to provide pension protection for employees and retirees in the event of termination of the Plan was limited by the amount available in the Pension Fund and that termination

of the Plan when the projected funding was short of accomplishment would result in loss of pensions. By reason of its awareness of this problem, the UAW insisted on and obtained, in the 1968 collective bargaining negotiations and again in the 1971 negotiations, agreements of White Motor to guarantee, "in the event there should be a closing of the Minneapolis-Moline plants at Lake Street, Minneapolis and Hopkins, Minnesota and a resulting termination of the Plan," payment of pensions at a designated level if the pension fund was insufficient to pay in full the pensions called for by the Pension Plan. The additional obligation of the Company by virture of the Pension Guarantee is estimated at $7,000,000. Copies of these 1968 and 1971 pension guarantees are attached hereto as Exhibits 4A and 4B.

15. During the three-year period of 1969, 1970 and 1971, the Minneapolis-Moline Division incurred losses in excess of $21,000,000. Early in January 1972, before the collective bargaining agreement effective as of May 1, 1971 was executed by the parties, the Company advised the UAW that it intended to close the Minneapolis and Hopkins plants. Thereafter, the Company and the UAW conducted negotiations on the possibility of continued operations at one or both of these plants. As a result of those negotiations, while the feasibility of long term operation of the Hopkins plant was not established, operations at that plant have continued. Operations at the Minneapolis plant were terminated in June 1972 and the plant was closed and the building housing it demolished.

16. Section 10.02 of the Plan provided that "[t]he Company shall have the sole right at any time to terminate the entire Plan." Relying on this provision, the Company on June 30, 1972 terminated the Plan. The UAW filed grievances challenging the Company's right to terminate the Plan prior to

expiration of the collective bargaining agreements on May 1, 1974 and this question was subsequently submitted to arbitration. On or about August 30, 1973, an arbitration award was entered ruling that the Plan could not be effectively terminated prior to May 1, 1974. That award was thereafter confirmed in litigation testing the award and the Company has complied with the award. By reason of such arbitration award, the Company took action again to terminate the Plan on May 1, 1974, and the Plan terminated on May 1, 1974.

17. On December 22, 1972 the Company and the UAW entered into a final closing agreement fixing and determining the obligations of the Company arising out of the closing of the Lake Street facility. By the terms of that agreement, copy of which is attached hereto as Exhibit 5, the Company established a severance pay fund for employees of the Lake Street plant and the Union in return agreed that, with the exception of the pension grievances (which are described in paragraph 16 hereof and which have since been resolved), the Company had no other legal or financial obligation to the Union or any employee arising out of the closing of the Lake Street facility.

18. The Minnesota Pension Act became effective on April 10, 1974 after the governor of Minnesota signed the act at the site of the then demolished Lake Street plant of the Company. That Act purports to impose upon Plaintiffs liabilities and charges in respect of pension benefits which are in direct conflict with the express agreements which Plaintiffs have reached through the collective bargaining process with the union representing White Farm employees in the Minnesota plants. Thus:

(a) The Minnesota Pension Act, in conflict with the express provisions of the Pension Plan, the March 3, 1972 pension guarantee negotiated with the UAW (Exhibit 4B hereto) and the Lake Street closing agreement of December 22, 1972, imposes on Plaintiffs a charge for full funding of all employee pensions upon termination of a Pension plan. On August 18, 1975 the Minnesota Department of Labor and Industry, in an attempt to enforce this pension funding charge, mailed to White Motor and White Farm notice of an assessment under the Minnesota Pension Act in the amount of $19,150,053. While the accuracy of the computations of the Department of Labor and Industry is in dispute, if the Act is applied to Plaintiffs there will be imposed on Plaintiffs a liability of many millions of dollars in excess of the limits of Plaintiffs liability under the agreements negotiated with the UAW.

(b) As of January 1, 1975 there were 981 retirees under the Plan and 260 active employees at the Hopkins plant who were participants in the Plan. In addition, there were, as of that date, 233 persons with vested rights to a deferred pension under the terms of the Plan by reason of having attained age 40 and 10 years of service at the time of the termination of their employment with White Farm. In direct conflict with the provisions of the Plan, the Minnesota Pension Act purports to grant vested rights to employees who at the time of the termination of their employment had 10 years of service but had not attained age 40. The effect of this provision of the Minnesota Pension Act would be to grant deferred vested pensions to 44 terminated employees of White Farm who at the time of the termination of their employment had 10 years of service but had not attained age 40 and who therefore do not qualify for deferred vested pensions under the Plan negotiated by the Company and the UAW.

(c) In January 1975 the Company and the UAW entered into an agreement establishing a new pension plan for the Hopkins plant and settling the dispute between the Company

and the UAW concerning the liability of the Company under the terminated Pension Plan. A copy of this agreement is attached hereto as Exhibit 6. That agreement, by its terms, was to become effective on May 1, 1975 but only if the Minnesota Department of Labor and Industry recognized that the settlement disposed of any claimed liability of the Company under the Minnesota Pension Act. For this reason, the settlement was submitted to the Commissioner of the Department of Labor and Industry for his review and approval. On May 12, 1975, Defendant stated his disapproval of the settlement embodied in the agreement and further stated that, unless an additional settlement proposal satisfactory to the Commissioner was immediately forthcoming, the Department of Labor and Industry would proceed to take all requisite action to effectuate its responsibilities and obligations as provided in the Minnesota Pension Act.

(d) On June 5, 1975, the Company and the UAW entered into another agreement to establish a new pension plan at the Hopkins, Minnesota plant. A copy of this agreement is attached hereto as Exhibit 7. The Minnesota Pension Act, if applied to Plaintiffs, will interfere with the performance of this agreement made through collective bargaining with the union representing production, maintenance and clerical employees of the Company at its Minnesota operations.

19. Since September of 1974, Defendant, who is charged with responsibility for the enforcement of the Minnesota Pension Act, has attempted to enforce the Act against Plaintiffs, requiring and demanding that Plaintiffs furnish documentary and other information under the Act, and taking other steps to enforce the Act against Plaintiffs in respect of the May 1, 1974 termination of the Plan.

20. More recently, and subsequent to the filing of the within action, Defendant, notwithstanding the pendency of the within action to adjudicate the validity of the Minnesota Pension Act, notified Plaintiffs, in a letter of August 18, 1975, a copy of which is attached hereto as Exhibit 8, that the Department of Labor and Industry was assessing against Plaintiffs a pension funding charge under the Minnesota Pension Act of $19,150,053, which assessment Plaintiffs were advised would be certified under said Act, unless Plaintiffs filed objection thereto and submitted to a hearing before the Department of Labor and Industry. Defendant has refused Plaintiffs' request that all administrative proceedings before the Minnesota Department of Labor and Industry covering this matter be stayed pending decision by this Court in the within action, to allow this Court to pass upon the issues raised in the within case.

21. Unless restrained by this Court, Defendant will continue to take action to enforce against Plaintiffs the Minnesota Pension Act, the validity and constitutionality of which Plaintiffs are challenging in the within action, thereby subjecting Plaintiffs to the trouble, expense, and burden of submitting to a hearing before the Minnesota Department of Labor and Industry under a statute which is invalid and unconstitutional, and to the trouble, expense and burden of such further efforts as are required of Plaintiffs to respond to efforts by Defendant to enforce the Minnesota Pension Act against Plaintiffs; and thereby subjecting Plaintiffs to other irreparable injury for which there is no adequate remedy at law.

Further, affiant sayeth not.

H. HERBERT PHILLIPS

Subscribed to and sworn before me, a Notary Public, this 23rd day of September, 1975. — Frank C. Heath, Notary Public.

[Seal]

State of Minnesota
County of Hennepin—ss.

Peter S. Hendrixson, being duly sworn, on oath says: that on the 29th day of September, 1975, he served the attached Affidavit of H. Herbert Phillips and Exhibits upon James P. Gerlach therein named, personally, at Office of the Attorney General, State Office Building, St. Paul, Minnesota in the County of Ramsey, State of Minnesota, by handing to and leaving with James P. Gerlach true and correct copy thereof.

PETER S. HENDRIXSON

Subscribed and sworn to before me this 29th day of September, 1975.—Olga T. Busceh, Notary Public, Hennepin County, Minnesota. My commission expires Sept. 15, 1978.

(Caption)

AFFIDAVIT OF JON K. MURPHY

State of Minnesota
County of Ramsey—ss.

JON K. MURPHY, being first duly sworn upon oath, deposes and says:

1. That your affiant is a Special Assistant Attorney General for the State of Minnesota and in that capacity is an attorney for the Minnesota Department of Labor and Industry.

2. That in the course of his duties affiant has participated in the Department of Labor and Industry's investigation relating to the termination by White Motor Corporation and White Farm Equipment Company (hereinafter "plaintiffs") of the May 1, 1971 Minneapolis-Moline Pension Plan (hereinafter the "1971 pension plan") and has provided legal advice pertaining thereto.

3. That on file with the Department of Labor and Industry is a letter co-signed by Robert J. Finley and H. H. Phillips,

plaintiffs' officers, dated April 16, 1974 notifying the Commissioner of the Department of Labor and Industry of plaintiffs' intention to terminate the 1971 pension plan as of May 1, 1974. A true and correct copy of said letter is attached hereto as Exhibit "A."

4. That upon receipt of this notice the Department of Labor and Industry commenced investigative proceedings pursuant to Minn. Stat., ch. 181B (1974) (the "Minnesota Pension Act"). In the initial stages of the investigation, Commissioner Malone, by letter dated September 18, 1974, requested certain information from plaintiffs. Included in that letter were requests for copies of the 1971 pension plan, lists of employees and retirees, their lengths of service, their dates of retirement, and their years of credited service under the 1971 pension plan.

5. That by letters dated October 8 and October 28, 1974, respectively, plaintiffs submitted to the Department of Labor and Industry the information requested in the Commissioner's letter described in paragraph 4 above.

6. That by letter dated December 6, 1974, the Department of Labor and Industry requested additional information including lists of all pension plan participants, their birthdates, dates of hire, years of service, benefit classifications, deductions, and the dates retiree pension benefits commenced. At a meeting between plaintiffs and the Department on December 10, 1974, most of this information was supplied by plaintiffs. By letter dated January 9, 1975, plaintiffs submitted the balance of the information to the Department, namely, a list of active employees containing, among other information, penciled-in benefit classifications for each active employee.

7. That by letter dated January 23, 1975, the Department of Labor and Industry requested additional information from

plaintiffs including schedules showing the pertinent data used in computing the benefits received or to be received by all participants of the 1971 pension plan.

8. That on January 30, 1975, representatives of the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) and plaintiffs met with officials of the Department of Labor and Industry and presented to the Department a Memorandum of Agreement with an effective date of May 1, 1975 which included a provision for a new pension plan for the active employees at plaintiffs' Hopkins, Minnesota, plant and a provision not to effectuate the 1973 benefit increases under the 1971 pension plan for retired employees. The agreement was conditioned upon the approval by the Department of a one million dollar settlement of the potential statutory funding charges liability for retired employees. There was no indication or representation contained therein that all of the retirees approved of this settlement proposal or, for that matter, that they approved of the non-effectuation of the 1973 benefit increases applicable to them.

9. That in order to properly assess the total dollar value of the proposed settlement, the Department of Labor and Industry requested various additional information from plaintiffs. In response thereto plaintiffs, on April 23, 1975, submitted to the Department computer print-outs which specified: each plan participant's monthly benefit level under the 1971 pension plan's 1972 benefit rates; the present value, as of April 30, 1974, of each plan participant's monthly benefit level; the monthly "guarantee level," pursuant to the plaintiffs' "Guarantee Letter" of March 3, 1972, for each plan participant; and, the present value of each plan participant's monthly "guarantee level."

10. That following an evaluation of the settlement proposal embodied in the Memorandum of Agreement and other information supplied by plaintiffs, Commissioner Malone, by letter dated May 12, 1975, declined to approve the provisions of the agreement which pertained to settlement of the retired employees' rights under the Minnesota Pension Act. A true and correct copy of this letter is attached hereto as Exhibit "B." With respect to the new pension plan for active employees, the Commissioner stated therein that it was not within the scope of his responsibility to become involved with what was essentially a matter of collective bargaining negotiations conducted on behalf of active employees.

11. That on June 5, 1975 the UAW and plaintiffs entered into a Memorandum of Agreement establishing a new pension plan for the active employees at the Hopkins, Minnesota plant. By this agreement benefit increases scheduled under the 1971 pension plan to become effective on January 1, 1973 were not effectuated as to both active *and* retired employees. This agreement was not submitted to the Commissioner for approval.

12. That on or about May 15, 1975, the Department of Labor and Industry obtained the actuarial services of Dr. Franklin Smith of Stennes & Associates, Bloomington, Minnesota to review materials submitted by plaintiffs and to recalculate monthly benefit increases provided for under the 1971 pension plan at the January 1, 1973 benefit levels provided therein.

13. That by letter dated August 18, 1975 Commissioner Malone notified White Motor Corporation and White Farm Equipment Company of the Department's assessment of pension funding charges. This assessment was based on schedules of monthly pension benefits, effective January 1, 1973 pur-

suant to the 1971 pension plan, for retired, active and terminated employees who had more than ten years of credited service under that plan and on the corresponding present values of these monthly benefits.

14. That prior to issuing his August 18, 1975 assessment letter, Commissioner Malone determined that in this circumstance funding charges must be assessed for the active employees, pursuant to Minn. Stat. § 181B.02, subd. 6(c) (1974), until such time that it was determined that the individual active employees were retained in employment without loss of pension credits accrued under the 1971 pension plan.

15. That the Commissioner's letter indicated that a hearing would be provided for the determination and resolution of any disputed issues concerning the assessed funding charges and that if no hearing was requested, the assessed charges would be deemed certified pursuant to Minn. Stat. § 181B.11 (1974).

16. That on October 1, 1975, the Department of Labor and Industry received from plaintiffs' counsel such a Request for Hearing. A true and correct copy of this Request for Hearing is attached hereto as Exhibit "C."

17. That on October 10, 1975, a hearing examiner was appointed to conduct hearings on the objections specified in plaintiffs' Request for Hearing and notification of the commencement of proceedings to hear and determine those objections was mailed to plaintiffs.

18. That the assessed pension funding charges contained in Commissioner Malone's letter of August 18, 1975 cannot be certified until the administrative proceedings are completed and a final decision therein has been issued.

19. That in the course of the Department of Labor and

Industry's administrative application of the Minnesota Pension Act as described above, the Department obtained a copy of a June 26, 1975 letter, attached hereto as Exhibit "D," from the UAW to plaintiffs' retirees who had been members of the UAW.

FURTHER YOUR AFFIANT SAYETH NOT.

JON K. MURPHY

Subscribed and sworn to before me this 13 day of Nov., 1975. — Sharon J. Gregoire, Notary Public, Ramsey Co., Minn. My commission expires May 15, 1982.

EXHIBIT A

April 16, 1974

Commissioner of Labor and Industry
State of Minnesota
444 Lafayette Road
St. Paul, Minnesota 55101

Subject: Notice Pursuant to Section 8 of
Private Pension Benefits Protection Act,
Minnesota Laws 1974, Chapter 437
(H.F. No. 2764)

Dear Sir:

Section 8 of the above-referenced Act provides:

"Sec. 8. Any employer who intends to cease to operate a place of employment or a pension plan within this state shall notify the commissioner (of labor and industry) of such intention not later than six months prior to the date the employer intends to cease such operation. In the case of an employer who intends to cease to operate a place of employment or a pension plan within this state within six months of the effective date of this act, the

notice required by this section shall be given by the employer as soon as practicable, but no later than ten days after the effective date of this act."

Section 17 of the Act provides that it shall take effect "the day following final passage."

White Farm Equipment Company, a Delaware corporation, is a wholly-owned subsidiary of White Motor Corporation, an Ohio corporation. (White Farm Equipment Company and White Motor Corporation are sometimes hereinafter collectively referred to as the "Company".) Prior to June 30, 1972, White Farm Equipment Company, through its Minneapolis-Moline Division, operated two manufacturing facilities in the Minneapolis area, to-wit, the Lake Street Plant and the Hopkins Plant. These manufacturing operations were originally acquired from Motec Industries, Inc. (formerly Minneapolis-Moline Company) in 1963. Employees at these plants were covered under a pension plan known as the "Minneapolis-Moline Pension Plan" (the "Pension Plan"), which was initially effective January 1, 1951, and which was the subject of various collective bargaining agreements between the Company and the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America—U.A.W. and its Local Unions Nos. 932, 1147, 107 and 337 (hereinafter collectively referred to as the "Union").

The Company notified the Union in early 1972 of its intent to terminate the Pension Plan effective June 30, 1972, and thereafter took steps necessary to implement that decision. The Union has challenged the validity of the Company's action in terminating the Pension Plan, contending that the Pension Plan could not be terminated as to Union-represented employees prior to May 1, 1974. The question of whether the

Company validly terminated the Pension Plan is presently the subject of litigation between the Company and the Union.

It is the Company's position that it had ceased to operate the Pension Plan, within the meaning of the Act, prior to the effective date of the Act and, therefore, that the provisions of the Act, and sections 3 through 6 thereof in particular, are not applicable to it. It is also the Company's position that it had ceased to operate the "place of employment," within the meaning of the Act, prior to the effective date of the Act and, therefore, that the Act is inapplicable on that ground.

Should the outcome of such litigation be unfavorable to the Company, however, the Company intends to terminate and cease to operate the Pension Plan for all purposes effective May 1, 1974, and has so notified the Union. You are hereby given notice of such intention pursuant to section 8 of the Act. It should be understood that, in giving this notice, the Company does not waive any rights or defenses which it may have.

Very truly yours,

ROBERT J. FINLEY
Vice President-Personnel
& Industrial Relations
White Farm Equipment
Company

H. H. PHILLIPS
Vice President-Personnel
& Industrial Relations
White Motor Corporation

EXHIBIT B

STATE OF MINNESOTA

Department of Labor and Industry

Saint Paul 55101

May 12, 1975

Mr. H. Herbert Phillips
Vice-President, Industrial Relations
White Motor Corporation
100 Erieview Plaza
Cleveland, Ohio 44144

Mr. George Kelly
Manager, Industrial Relations
White Motor Corporation
130 9th Avenue South
Hopkins, MN 55343

Mr. Leonard Page, Counsel
United Auto Workers
Solidarity House
8000 E. Jefferson Ave.
Detroit, Michigan 48214

Mr. Art Shy
Assistant to the vice-president
United Auto Workers
Solidarity House
8000 E. Jefferson Ave.
Detroit, Michigan 48214

Gentlemen:

Your Memorandum of Agreement as presented to the Minnesota Department of Labor and Industry on January 30, 1975 for our examination, consideration and approval has been reviewed and studied pursuant to the powers vested in me by virtue of the Minnesota Private Pension Benefits Protection Act (hereinafter called the "Minnesota Pension Act").

The Department understands that this Memorandum of Agreement has been approved and ratified by White Motor Corporation (hereinafter called "White Motor") and the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (hereinafter called "UAW").

You have requested that the Department approve the terms of this Memorandum of Agreement which, among other things, proposes a settlement of statutory obligations for retirees. This proposed settlement, however, has been tied to and co-mingled with a separate agreement covering current employees of White Motor at the Hopkins Plant, an agreement negotiated and collectively bargained for between White Motor and UAW on behalf of its local affiliates.

It is not within the Commissioner's responsibilities, as set forth under the Minnesota Pension Act, to become involved with what is essentially collective bargaining negotiations. Related economic issues are not within the purview of the Minnesota Pension Act but rather are matters of concern for which White Motor and UAW are primarily responsible.

The full benefit rights of retirees and those terminated employees with deferred vested benefits cannot become dependent upon or infringed upon by such negotiations, nor can such negoitations unduly influence or jeopardize the statutory rights and obligations of retirees and the terminated vested employees as covered under the White Motor Pension Plan which terminated May 1, 1974 (hereinafter referred to as the "Terminated Plan").

Under paragraph 7 of the Memorandum of Agreement, you have requested that this Department acknowledge that the new pension plan as negotiated and proposed lump sum settlement to current retirees be approved by the Commissioner as satisfying the Corporation's liabilities under the Minnesota

Pension Act. The Commissioner's determination of fair and equitable treatment for retirees and those vested under the Terminated Plan and as protected by the Minnesota Pension Act must be based on a comparison of the amount of that proposed settlement versus what each retiree and vested terminated employee is entitled to under the Terminated Plan as protected by the Minnesota Pension Act.

We have reviewed the information, data and documents furnished to the Department by White Motor on April 23, 1975. Based on that information, as Commissioner of the Department of Labor and Industry I have analyzed the proposal in light of statutory obligations and hereby issue the following determination:

1) The proposed New Pension Plan to be effective May 1, 1975 (hereinafter called "New Plan") as agreed between White Motor - Hopkins and the UAW as outlined in said Memorandum of Agreement appears to satisfy White Motor's obligation under the Minnesota Pension Act with respect to present employees (including those eligible for immediate retirement) at the Hopkins Plant who were covered by the previous Terminated Plan and who will be covered under the New Plan without loss of pension credits, in accordance with said Memorandum of Agreement.

As Commissioner, in issuing my determination with respect to such current employees, I condition such determination on the fulfillment of past service credits for those employees specified in point (1) above and further that White Motor Corporation take all requisite action to qualify said New Plan under the Federal Employee Retirement Income Security Act (ERISA) and to comply with all applicable provisions of said Act so that such New Plan is properly insured by the Pension Benefit Guaranty Corporation to the maximum possible.

2) The proposal for a one million dollar lump sum settlement does not provide fair and equitable treatment to current retirees having vested pension benefits under the Terminated Plan. Nor does such settlement provide adequate consideration to satisfy the statutory rights of those terminated employees with deferred pension benefits.

The information set forth in the documents furnished the Department by White Motor on April 23, 1975 indicates a $12,325,422 present value (as calculated at the 1/1/1972 benefit level) for full retirement benefits due retired employees under the Terminated Plan. Said document indicates the present value of retirement guarantees under the Corporation's March 3, 1972 Pension Guarantee will approximate only $5,606,261. This amount coupled with the $1 million settlement offer, is not sufficient consideration for the State of Minnesota to relinquish its statutory jurisdiction.

The Department is willing to review and consider any additional settlement proposals which will be fair and equitable and more commensurate with the full benefit level for those whose benefits are protected by the Minnesota Pension Act. Unless such a proposal is immediately forthcoming, the Department shall proceed to take all requisite action to effectuate its responsibilities and obligations as provided by the Minnesota Pension Act.

Sincerely,
DEPARTMENT OF LABOR AND INDUSTRY
E. I. "Bud" MALONE
Commissioner

EIM/ci

cc: Bob Killeen, Business Rep.
Gerald Johnson, Pres., Local 197, UAW
James Brown, Pres., Local 337, UAW
Al Behrendt, Pres., Retiree Association

(Caption)

AFFIDAVIT OF STANLEY A. ENEBO

STANLEY A. ENEBO, being first duly sworn on oath, deposes and says:

1. I am presently and was at all material times mentioned herein a member of the House of Representatives of the State of Minnesota.

2. I was one of the chief authors of the Minnesota Private Pension Benefits Protection Act, Minn. Stat. ch. 181B (1974) (hereinafter the "Minnesota Pension Act").

3. I am presently and was at all material times mentioned herein Chairman of the Labor-Management Relations Committee of the Minnesota House of Representatives. That committee heard extensive testimony concerning the Minnesota Pension Act.

4. Subsequent to the passage of the Minnesota Pension Act, I prepared a letter expressing concern about the relationship between the Minnesota Pension Act and proposed federal pension reform legislation that was eventually enacted as the Employee Retirement Income Security Act of 1974. In particular, I urged that the Minnesota Pension Act not be preempted until provisions of the federal pension legislation became fully operative.

5. That letter, dated May 9, 1975, was mailed to each member of the Joint Senate-House Conference Committee considering the proposed pension legislation, as well as members of the Minnesota Delegation to Congress. Each letter was accompanied by a copy of the Minnesota Act and a summary of the main provisions of the Act. A true and correct copy of this letter is attached hereto as Exhibit A.

6. On July 9, 1974, I traveled to Washington, D.C., in order to personally present the appeal, that I had made in my letter of May 9, to those Congressmen and congressional staff members who were involved in the Conference Committee deliberations on the federal pension legislation. I was accompanied by Minnesota State Senator John Chenoweth, the other chief author of the Minnesota Pension Act, Leroy H. Schramm, legislative analyst who assisted with the drafting of the Minnesota Pension Act, and Phyllis Spielman, then administrative assistant to the Labor-Management Relations Committee of the Minnesota House of Representatives.

7. On July 10, 1975, along with Senator Chenoweth, I met with Representatives Albert Quie and Donald Fraser and Senator Walter Mondale, all members of the Minnesota Delegation to Congress. We also met with Mr. Vance Anderson, Mr. Richard Fay, and Mr. Michael Schonenberger, members of the staffs of Representative John Dent, Senator Gaylord Nelson, and Senator Harrison Williams, respectively. Those Congressmen, as well as Representative Quie, were serving on the Conference Committee considering the proposed federal pension legislation, Senator Williams as Chairman. At those meetings we explained the Minnesota Pension Act and discussed its relationship to the proposed federal pension legislation.

FURTHER AFFIANT SAYETH NOT.

STANLEY A. ENEBO

Subscribed and sworn to me this 14th day of November, 1975. — James P. Gerlach, Notary Public, Hennepin County, Minnesota. My commission expires July 9, 1981.

EXHIBIT A

May 9, 1974

The Honorable Ronald A. Sarasin
511 Cannon Office Building
Washington, D. C.

Dear Congressman Sarasin:

Landmark legislation in the field of private pension protection has just passed both the Minnesota House and Senate and is now on the way to the Governor's office for his signature. Final vote in the Senate occurred March 22, by a 39-15 margin and it passed the House Monday, March 25, by an overwhelming 127-3 margin.

State Senator John Chenoweth and I as chief authors of this bill have pushed vigorously for this legislation because, though we have expected Congress to be nearing enactment of such legislation since last fall, we were apprehensive that federal re-insurance, if included in the final compromise version, still might not become effective until December 13, 1975 or thereafter. This would leave a time gap in which employees could lose their pension benefits as we have sadly experienced with Minneapolis-Moline right here in Minnesota.

We, therefore, urge you to note that our legislation does include a "self-destruct" clause which goes into effect when your federal termination insurance becomes mandatory. *However, our urgent request to you is that in your conference committee, you make certain that you do not preempt us regarding the employer assets to protect pension funds until the re-insurance phase of the federal legislation is fully operative.*

Any preemption in this area until federal re-insurance is fully in force would leave a void which would lay the groundwork for further Minneapolis-Moline-White Motor Company disasters here in Minnesota.

May we have your assurance of support and cooperation in seeing to it that the pension protection safeguard we have built into the Minnesota act is not preempted at too early a date in federal legislation now before a congressional conference committee, some of whose members we understand are yet to be appointed?

Attached is a copy of the bill which was recently signed by the Governor and a brief summary of its main provision.

Sincerely,
STANLEY A. ENEBO
Chairman
Labor-Management Relations Committee

SAE:js
Enclosure

(Caption)

AFFIDAVIT OF ALFRED H. BEHRENDT

Mr. Alfred H. Behrendt, being first duly sworn on oath, deposes and says:

1. I am now 65 years old. I currently reside at 3457 Central Avenue Northeast, Minneapolis.

2. I was a machine operator at Minneapolis Moline for approximately 30 years.

3. I started working at Minneapolis Moline May 12, 1942, and retired May 1, 1972, when I was 62 years old.

4. At the time I retired my salary was about $10,000 a year.

5. Just before I retired I received a personnel sheet from the company which indicated that I would be receiving my full pension benefits of $387.65 a month which included a monthly early retirement supplement of $194.12. It was my understanding that I'd be receiving my regular pension benefit of

$193.53 for life and my supplemental benefit until I reached age 65. A true and correct copy of this personnel sheet, dated April 18, 1972, is attached hereto as Exhibit A. I also received a letter from Mr. Tuohey, manager of employee relations for the company, confirming that I would be getting these amounts in pension benefits. A true and correct copy of the letter from Mr. Tuohey, dated May 10, 1972, is attached hereto as Exhibit B.

6. I received my full monthly pension benefits of $387.65 for about three months after retirement at which time my supplemental benefits were discontinued and my regular benefits were reduced to $90.83 a month. I received this reduced amount for a little over one year. I think it was in October of 1973 when I started receiving my full pension benefits again.

7. I always thought that my pension benefits were guaranteed. I participated in negotiations for the first pension plan and it was my understanding that these benefits were deferred compensation. In other words we were giving up some wages in order to receive the money later in pension benefits.

8. I relied so strongly on the promise of full pension benefits at retirement that in 1954 I gave up an opportunity to take a higher paying job with another company. I had been laid off from Minneapolis Moline for three months and during that time I accepted a temporary position with Rayette. Rayette offered me a full time job setting up and running a machine shop for them in St. Paul. I turned them down because I had 15 years seniority at White Motor and the pension promise gave me full security. Therefore, I went back to White Motor when I was recalled. I've regretted that decision ever since I've discovered that I will not get my full pension. I could have made twice as much money at Rayette than I was making with White because I would have been in charge of the machine shop.

9. At the present time I am receiving my regular pension benefit of $193.53 a month. My supplemental benefit was discontinued when I reached 65. When my benefit is cut back to $90.83 a month it will be difficult. My wife and I will have to make some pretty drastic changes in the way we are living. Right now she's working but she will also have to retire soon. After she retires with my pension benefit at only $90.83 we will have to move into a low rent housing project. I understand, though, that right now there is a one year waiting period to get into most of these housing projects.

FURTHER AFFIANT SAYETH NOT.

ALFRED H. BEHRENDT

Subscribed and sworn to me this 13th day of November, 1975. — Henry Baron, Notary Public, Hennepin County, Minnesota. My commission expires Nov. 14, 1980.

EXHIBIT A

MINNEAPOLIS-MOLINE

AUTHORIZATION OF MONTHLY PENSION BENEFITS

Pension Plan for Hourly Employees

Normal, Supplemental Allowance, T & P, Special Early, Spouse Option

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Name: Alfred H. Behrendt; Address: 2828 Portland Ave. So. Apt. 202; City: Mpls.; State: MN; Zip Code: 55407; Social Security No.: 718-18-6640; Pension Unit: 932; Date of Hire: 5/12/42; Date of Birth 5/10/10; Age: 62; Service Termination Date: 4/30/72; Credited Service.: 30.5; Last Day Worked: 4/28/72; Retirement Date: 4/30/72.

CLASSIFICATION OF RETIREMENT BENEFIT:

( ) NORMAL RETIREMENT

( ) T&P DISABILITY—(SPECIAL EARLY)

( ) DEFERRED VESTED PENSION—Upon attaining age 65

( ) EARLY RETIREMENT—with payment commencing ( ) at once
( ) at age 65

(X) SUPPLEMENTAL ALLOWANCE

---

1. Monthly benefit: 30.5 years credited service x $6.75 x Applicable Reduction; Factor: none; $205.88

2. Supplemental allowance $400 (subject to Reduction):
   a. Number of months service is less than 30 years: (0) $400 – (0 x 1.111) = $400.00
   b. Supplemental reduction for under age 60. (60 divided by number of months under age 65 —— x Line 2a (Sec. 6.15 (b)(2)) = $......
   c. 121.33 x base hourly rate $4.40 = $533.85

3. Total benefit (if line 2c is less than line 2a or line 2b, use 2c) $400.00

4. Total Supplement (line 3 – line 1) = $194.12

5. Special T&P temporary benefit (Sec. 6.02 (d)(ii) or 6.04 (c)(ii)):
   —— years x $7.50 (not to exceed $187.50) (whether or not payable) $......

6. Supplement (line 4 ——) less Special T&P Temporary benefit (Sec. 6.15(c)) $......

7. Total Supplemental Allowance payable $194.12

8. Actuarial adjustment for option, if selected, applicable to line 1 only (Sec. 6.13):
   a. Employee is 2 years in excess of 5 years older than spouse
   b. 2 years (line 8a) x 1/2% equals minus 1%

   c. 95% minus 1% equals 94% adjustment factor

9. Monthly benefit (line 1) adjusted for option: $205.88 x 94% (Line 8c) $193.53

10. Surviving Spouse Benefit—55% of line 9 = $106.44

11. Monthly benefit payable to age 65 (line 1 or line 9 plus line 7, and line 5 if payable) $387.65

I am the "employee" hereinabove named and identified. I have read and understand the calculations above and accept them as correct. I also agree to restrict my participation in the work force. If my earnings exceed maximum permitted under the Social Security Act, my benefits will cease and, in certain instances, I could be penalized. (See Sec. 6.15(d)). I request that my benefits be paid in accordance with my election indicated on Form 1.

Date 4/18/72.

Employee Signature
Alfred H. Behrendt

AUTHORIZATION FOR PAYMENT OF MONTHLY PENSION BENEFITS

We have examined the foregoing data and hereby authorize payment of monthly pension benefits of $193.53 as shown in item 9 above, and temporary benefits of $194.12, as shown in item 7 above, to commence as of May 1, 1972.

F. M. BOAS
Pension Committee —
Employer Representative

Date 4/18/72

CLIFFORD SNEHECH
Pension Committee —
Employee Representative

Date 4/18/72

MINNEAPOLIS-MOLINE
Division of White Motor Corporation
Hopkins, Minnesota 55343

May 10, 1972

Mr. Alfred H. Behrendt
2828 Portland Avenue South
Apt. 202
Minneapolis, Minnesota 55407

Dear Mr. Behrendt:

The early pension benefit which you are entitled to receive under the provisions of the Pension Plan amounts to $193.53, plus a supplemental allowance of $194.12 for a total of $387.65 effective May 1, 1972. The supplemental allowance will be terminated as of May 31, 1975 and on June 1, 1975 your regular monthly pension benefit will be $193.53 plus reimbursement for Medicare.

Arrangements have been made with the Chase Manhattan Bank of New York to make the monthly benefit payments. We are attaching their check No. 214235 in the amount of $377.65* covering the month of May, 1972. Future checks will be mailed directly to you on the first of the month by Chase.

Also attached is a set of forms for your personal records. If you fail to receive your checks at any time, please contact your Personnel Department.

Sincerely,
J. E. TUOHEY
Manager
Employee Relations

*$10.00 Federal Tax per your request.

JET/mj
Attachment
cc: Local 932 Pension Committee
F. M. Boos—L. S. Personnel

(Caption)

AFFIDAVIT OF SPENCER WESTERBERG

Mr. Spencer Westerberg, being first duly sworn on oath, deposes and says:

1. I am now 60 years old.

2. I was an electrician for Minneapolis Moline for 35 years.

3. I began work at Minneapolis Moline on April 25, 1935, and retired on December 1, 1970, at age 56.

4. At the time I retired my salary was about $9,000 yearly.

5. Shortly after I received my first pension check I got a letter from Mr. Tuohey, benefits manager of the company, confirming that my full pension benefits would be $338.10 a month which included a monthly special early retirement benefit of $150. The early retirement benefit was to be terminated on November 30, 1979, when I will be 65. A true and correct copy of the letter from Mr. Tuohey, dated February 17, 1971, is attached hereto as Exhibit A.

6. My full pension benefits were later raised to $378.78 monthly under the foundry agreement.

7. I received my full monthly pension benefits until August of 1972 at which time my special early retirement supplement was discontinued and my regular monthly pension benefit was cut back to $175.00. In October of 1973 I began receiving my full pension benefits again.

8. I wasn't surprised when I got the cutback because I always understood the pension was not fully funded and that our pensions were dependent upon the solvency of the company. I knew we were in trouble when White Motor came in because we had the UAW look up White Motor's record. At that time White Motor had bought approximately 20 small companies and closed down most of them and transferred the

work to other places. I figured that they intended to do the same with Minneapolis Moline.

9. Of course the rank and file were not aware of any of this. I know that the average worker at Minneapolis Moline trusted everybody and believed what the company told them. Their attitude was that the company would do the best by them. I know that most of the workers thought that the pension plan was fully funded and that their pension benefits were guaranteed. I knew what was really going on because I had held various leadership positions in the UE and for a time in the UAW. I was always particularly concerned about the pension agreements and myself and some others attempted at various times to get some straight information from the company and from the UAW about the terms of our pension agreement and plan. At one point we even called a meeting with MPIRG, the local Nader group, to enlist their aid in the effort to find out the provisions of the pension agreement and plan.

10. Right now I'm receiving my full pension benefit of $378.78 monthly. That includes my special early retirement allowance which I should receive for another four years. However, it is my understanding that the pension fund will run out shortly and we'll all be cut back to the guarantee level. This means I will lose my supplement and my regular pension will be cut back. However, I'm not sure what it will be cut back to as there seems to be some confusion in my case. I would guess that it will be less than $100 a month as that's what the guarantee level seems to be for everyone else who worked at the foundry.

11. Right now I have a job as a checking receiver with a small company in Bloomington. It doesn't pay very much but it's physically easy work. My job at the foundry was hard

work and I'm too old now to do that kind of work. My plan was to keep the checking receiver job till age 62 and then quit working and live off of my pension benefits and social security. Now that my pension benefits will be cut back to probably under $100 a month I won't be able to quit working at age 62 as I had planned. I should even look for a higher paying job but I don't feel I can do physically strenuous work anymore.

FURTHER AFFIANT SAYETH NOT.

SPENCER WESTERBERG

Subscribed and sworn to me this 13th day of November, 1975. — Henry Baron, Notary Public, Hennepin County, Minnesota. My commission expires November 14, 1980.

EXHIBIT A

WHITE FARM EQUIPMENT
A Subsidiary of White Motor Corporation
Hopkins, Minnesota 55343
612/935-5181

February 17, 1971

Mr. Spencer B. Westerberg
6809 Newton Avenue South
Richfield, Minnesota 55423

Dear Mr. Westerberg:

We believe that you have already received your first pension check or checks, mailed to you directly from The Chase Manhattan Bank.

The early pension benefit which you are entitled to receive under the provisions of the Pension Plan amounts to $188.10, plus a special early allowance of $150.00 for a total of $338.10 effective December 1, 1970. The special early allowance will be terminated as of November 30, 1979 and on December 1, 1979 your regular monthly pension benefit will be $188.10 plus reimbursement for Medicare.

Also attached is a set of forms for your personal records. If you fail to receive your checks at any time, please contact your Personnel Department.

Sincerely,
J. E. TUOHEY
Benefits Manager

JET/mj
Attachment
cc: Local 932 Pension Committee
F. M. Boos—L. S. Personnel

(Caption)

AFFIDAVIT OF CHARLES G. DAPPER

Mr. Charles G. Dapper, being first duly sworn on oath, deposes and says:

1. I am now 59 years old. I currently reside at 4338 Logan Avenue North, Minneapolis.

2. I was a timekeeper for Minneapolis Moline for approximately 33 years. I am presently retired.

3. I started working at Minneapolis Moline April 7, 1937, and retired February 1, 1973, when I was 56 years old.

4. At the time I retired my salary was about $9,000 a year.

5. After I retired I got a letter from the company informing me that I would be getting my full pension benefits of $237.62 a month which included a monthly early retirement supplement of about $67.00. It was my understanding that I'd be getting my regular pension benefits for life and my supplemental benefits until I reached age 65. A true and correct copy of this letter dated March 6, 1973, is attached hereto as Exhibit A.

6. I received my full monthly benefit of $237.62 until 1974 when I was assessed a penalty against future supplemental

allowances. I was informed of this penalty by letter dated March 5, 1974, from Mr. Tuohey of the company. A true and correct copy of that letter is attached hereto as Exhibit B. Apparently to be eligible for the supplemental benefits a retired employee must agree to limit his earnings after retirement and I seemed to have earned to much during 1973.

7. I am therefore currently receiving only my regular pension benefit which should be $170.60 according to the letter I received when I retired but which is instead only $153.54. I don't understand why my regular benefit has been reduced.

8. I understand that soon my regular pension benefit will be cut to $69.58 a month.

9. I don't understand how the company can cut back our regular pension benefits at all. I always thought that all of my regular pension benefits were guaranteed to me for life. After thirty years of working for Minneapolis Moline I thought that I had built up security for my retirement.

10. If my pension benefits are cut back to $69.58 a month my wife and I will probably have to go on welfare and we will lose our home. Right now our sole source of income is my pension benefits. I won't get any social security for another couple years and my wife has never worked. I have monthly mortgage payments alone of $114.00. The utility bills for my home come to about $50 a month and food costs us about $80 a month. My wife has had to have twenty four cobalt treatments for cancer. These treatments were done on an outpatient basis and the company medical plan does not pay for outpatient services. Therefore, I had to pay the full $1,000 bill for these treatments out of my own pocket. All of these expenses have almost wiped out my savings. I think that my savings will last at the most another year. Any cutback in my pension benefits will be catastrophic for my wife and I.

FURTHER AFFIANT SAYETH NOT.

CHARLES G. DAPPER

Subscribed and sworn to me this 13th day of November, 1975. — Henry Baron, Notary Public, Hennepin County, Minnesota. My commission expires Nov. 14, 1980.

EXHIBIT A

MINNEAPOLIS-MOLINE

AUTHORIZATION OF MONTHLY

PENSION BENEFITS

Pension Plan for Hourly Employees

Normal, Supplemental Allowance, T&P,

Special Early, Spouse Option

Name: Charles G. Dapper; Address: 4338 Logan Ave. North; City: Minneapolis; State: MN; Zip Code: 55412; Social Security No.: 473-10-1484; Pension Unit: 1147; Date of Hire: 4-6-1937; Date of Birth: 5-12-16; Age: 56-7; Service Termination Date: 6-30-72; Credited Service: 34; Last Day Worked: 6-30-72; Retirement Date: 2-1-73.

CLASSIFICATION OF RETIREMENT BENEFIT:

( ) NORMAL RETIREMENT

( ) T&P DISABILITY - (SPECIAL EARLY)

( ) DEFERRED VESTED PENSION - Upon attaining age 65

(X) EARLY RETIREMENT - with payment commencing (X) at once
( ) at age 65

( ) SUPPLEMENTAL ALLOWANCE

---

1. Monthly benefit: 34 years credited service x $7.50 x Applicable Reduction ($255.00) Factor 66.9 $170.60

2. Supplemental allowance $400 (subject to Reduction):
   a. Number of months service is less than 30 years: (——) $400 – (—— x 1.111) = $400.00
   b. Supplemental reduction for under age 60. (60 divided by number of months under age 65 594059 x Line 2a (Sec. 6.15 (b)(2)) = $237.62
   c. 121.33 x base hourly rate $ ——— = $ ———
3. Total benefit (if line 2c is less than line 2a or line 2b, use 2c) $237.62
4. Total Supplement (line 3 – line 1) = $67.02
5. Special T&P temporary benefit (Sec. 6.02 (d)(ii) or 6.04 (c)(ii)):
   —— years x $7.50 (not to exceed $187.50) (whether or not payable) $———
6. Supplement (line 4 ——) less Special T&P Temporary benefit (Sec. 6.15(c)) $———
7. Total Supplemental Allowance payable $67.02
8. Actuarial adjustment for option, if selected, applicable to line 1 only (Sec. 6.13):
   a. Employee is —— years in excess of 5 years older-younger than spouse
   b. —— years (line 8a) x 1/2% equals plus-minus ——%
   c. 95% plus-minus —— % equals ——% adjustment factor
9. Monthly benefit (line 1) adjusted for option: $—— x ——% (Line 8c) $———
10. Surviving Spouse Benefit - 55% of line 9 = $———
11. Monthly benefit payable to age 65 (line 1 or line 9 plus line 7, and line 5 if payable) $237.62

I am the "employee" hereinabove named and identified. I

have read and understand the calculations above and accept them as correct. I also agree to restrict my participation in the work force. If my earnings exceed maximum permitted under the Social Security Act, my benefits will cease and, in certain instances, I could be penalized. (See Sec. 6.15(d)). I request that my benefits be paid in accordance with my election indicated on Form 1.

Employee Signature
Charles G. Dapper

Date 1-31-73

AUTHORIZATION FOR PAYMENT OF MONTHLY PENSION BENEFITS

We have examined the foregoing data and hereby authorize payment of monthly pension benefits of $———, as shown in item above, and temporary benefits of $———, as shown in item 7 above, to commence as of —————.

E. V. WALSKI
Pension Committee
Employee Representative

Date 3-6-73

EXHIBIT B

WHITE MATERIALS HANDLING DIVISION
White Motor Corporation
Hopkins, Minnesota 55343
Phone 612 - 935-2171

March 5, 1974

To: Charles Dapper

Section 6.15 of the Pension Plan provides that, to be eligible for Supplemental Allowance payments, a retired employee must have agreed to restrict his participation in the labor

force within the earnings limit of the then applicable Federal Social Security Act and that if earnings after retirement in any calendar year are in excess of the amount permitted under the then current Federal Social Security Act, penalties equal to double the amount by which such earnings exceed the amount permitted shall be charged against each succeeding Supplemental Allowance until the full amount of such penalty is satisfied.

By our letter of February 4, 1974 we requested information regarding your earnings during the calendar year 1973 and you have responded by reporting earnings of $5,384.53. This establishes a penalty of $1,569.06 against future Supplemental Allowance. Unsatisfied penalties based on 1972 earnings are in the amount of $0, making a total outstanding penalty at this time of $1,569.06.

The enclosed pension check, therefore, includes no Supplemental Allowance and no future Supplemental Allowance will be payable until the above penalties, plus any penalties for earnings in future years have been satisfied. In addition, of course, you understand that no Supplemental Allowance is payable after age 65 in any case.

If you have any questions concerning the above, please let me know.

Sincerely,
J. E. TUOHEY
Manager
Compensation & Benefits

JET/jss

(Caption)

AFFIDAVIT OF CLARENCE GROSE

Mr. Clarence Grose, being first duly sworn on oath, deposes and says:

1. I am now 65 years old. I presently reside at 2910 Russell Avenue North, Minneapolis.

2. I was a machine operator for Minneapolis Moline for 29 years. At present I am retired.

3. I started working at Minneapolis Moline November 5, 1942, and retired February 20, 1972, when I was 62 years old.

4. At the time I retired my salary was about $10,000 per year.

5. When I retired I got a letter from the company informing me that I would be getting my full pension benefits of $371.99 per month which included a monthly early retirement supplement of about $190.00. It was my understanding that I would receive a total of $371.99 a month in benefits until age 65. After age 65 I was then to get my full regular pension benefit of $181.07 for the rest of my life. A true and correct copy of the letter which I received from the company at the time I retired is attached hereto as Exhibit A.

6. I received my full $371.99 monthly benefits for about six months. Thereafter for a period of a little over a year I received only $90 per month. This figure reflects a discontinuation of my supplemental benefits and a cutback of my regular pension benefits from $187.07 to $90.

7. The pension cutback came as a complete shock to me. I always thought that our pension agreement with the company guaranteed us our full pensions. We were to receive these pension benefits in lieu of wages. I never thought that the company could take any of our pension monies away from us.

8. Since I never thought that the pension could be reduced I didn't make any arrangements to save in other ways except that I saved a little through the credit union.

9. I am currently receiving my full regular pension of about $180.00 a month. My supplemental pension benefits were discontinued when I reached age 65. Now I understand that my regular pension benefits will again be cut to $90 a month. When that happens it isn't going to be easy for my family to get by.

10. I am supporting my wife and four children on just what I take home from my part-time job which comes to about $160 monthly, my social security which comes to about $460.00 monthly and my $180 monthly pension benefits. I have two children who are still in high school and one in junior high. I'm trying to put my eldest child through college at St. Cloud State. It costs me about $2,000 a year to put her through college and she works part time to help out. I am also making mortgage payments on my home, which come to about $100 each month. When my pension gets cut back to $90 a month it's going to make it more difficult for me to meet these obligations. We will probably have to change something but I don't know what. I would hate to ask my eldest child to give up college but I have to think of the whole family.

CLARENCE W. GROSE

Subscribed and sworn to before me this 13th day of November, 1975. — Henry Baron, Notary Public, Hennepin County, Minnesota. My commission expires November 14, 1980.

EXHIBIT A
MINNEAPOLIS-MOLINE
Authorization of Monthly Pension Benefits
Pension Plan for Hourly Employees
Normal, Supplemental Allowance, T&P,
Special Early, Spouse Option

Name: Clarence W. Grose; Address: 1616 Emerson Ave. No.; City: Mpls.; State: Minn.; Zip Code: 55411; Social Security No.: 473-10-1761; Date of Birth: 2/20/10; Age: 61; Last Day Worked 1/31/72; Pension Unit: 932; Service Termination Date: 1/31/72; Retirement Date: 1/31/72; Date of Hire: 11/5/42; Credited Service: 29.

CLASSIFICATION OF RETIREMENT BENEFIT:

( ) Normal Retirement

( ) T&P Disability (Special Early)

( ) Deferred Vested Pension Upon attaining age 65

( ) Early Retirement—with payment commencing

( ) at once

( ) at age 65

(X) Supplemental Allowance

1. Monthly benefit: 29 years credited service x $6.75 x Applicable Reduction Factor = $195.75

2. Supplemental allowance $400 (Subject to Reduction):

a. Number of months service is less than 30 years: (12) $400 - (12 x 1.111) = $386.67

b. Supplemental reduction for under age 60. (60 divided by number of months under age 65 —— x Line 2a (Sec. 6.15 (b) (2)) = $ ————

c. 121.33 x base hourly rate $3.65 = $442.85

3. Total benefit (if line 2c is less than line 2a or line 2b, use 2c) $386.67

4. Total Supplement (line 3 - line 1) = $190.92

5. Special T&P temporary benefit (Sec. 6.02 (d) (ii) or 6.04 (c) (ii)): .... years x $7.50 (not to exceed $187.50) (whether or not payable) $........

6. Supplement (line 4 ....) less Special T&P Temporary benefit (Sec. 6.15(c)) $....

7. Total Supplemental Allowance payable $190.92

8. Actuarial adjustment for option, if selected, applicable to line 1 only (Sec. 6.13):

a. Employee is 5 years in excess of 5 years older than spouse

b. 5 years (line 8a) x 1/2% equals minus 2.5%

c. 95% minus 2.5% equals 92.5% adjustment factor

9. Monthly benefit (line 1) adjusted for option: $195.75 x 92.5% (Line 8c) = $181.07

10. Surviving Spouse Benefit—55% of line 9 = $99.59

11. Monthly benefit payable to age 65 (line 1 or line 9 plus line 7, and line 5 if payable) = $371.99

I am the "employee" hereinabove named and identified. I have read and understand the calculations above and accept them as correct. I also agree to restrict my participation in the work force. If my earnings exceed maximum permitted under the Social Security Act, my benefits will cease and, in certain instances, I could be penalized. (See Sec. 6.15(d)). I request that my benefits be paid in accordance with my election indicated on Form 1.

Date: 1-19-72

CLARENCE W. GROSE
Employee

AUTHORIZATION FOR PAYMENT OF
MONTHLY PENSION BENEFITS

We have examined the foregoing data and hereby authorize payment of monthly pension benefits of $181.07 as shown in item 9 above, and temporary benefits of $190.92, as shown in item 7 above, to commence as of February 1, 1972.

HARRY WECKMAN
Pension Committee
Employee Representative

Date: 1-19-72

FRED BOOS
Pension Committee
Employer Representative

Date: 1-19-72

(Caption)

AFFIDAVIT OF ROY G. PIERCE

Mr. Roy G. Pierce, being first duly sworn on oath, deposes and says:

1. I am now 70 years old. I currently reside at 2811 East 28th Street, Minneapolis.

2. I was a security guard for Minneapolis Moline for approximately 27 years.

3. I started working at Minneapolis Moline on August 3, 1942, and retired on October 1, 1969, when I was 64 years old.

4. At the time I retired my salary was about $7,000 a year.

5. At the time I retired I received a statement from the company informing me that I would be getting my full pension benefits of $332.18 a month which included a monthly early retirement supplement of $211.40. It was my understanding that I'd be getting my regular monthly pension benefit of $120.78 for life and my supplemental benefit of $211.40 until I reached age 65. A true and correct copy of this statement

dated September 15, 1969, is attached hereto as Exhibit A.

6. From October 1, 1969, to September 30, 1970, I received my full pension benefit of $332.18.

7. On September 30, 1970, my supplemental benefit was discontinued as I had reached age 65.

8. A recalculation of benefits made in 1970 increased my regular pension to $154.38. Thereafter, I received my full regular pension benefit of $154.38 until August of 1972 at which time I was cut back to $74.00 a month. I received only $74.00 a month for a little over a year and then I started getting my full regular pension benefit again.

9. It took me by complete surprise when my regular pension benefit was cut back. As I understood the pension agreement and plan I was supposed to get my full regular pension for the rest of my life. I felt that the amount I was receiving should never be reduced.

10. The pension meant everything to me and I never thought anything could be done to take it away from me. It was part of my salary and I had earned it. I didn't make any other investments or arrangements for saving.

11. My current monthly pension benefit is $154.38. It will soon be reduced, I understand, to $74.00. I'm afraid that with my wife's and my illness we won't be able to make it if the pension is reduced to this amount. My wife has had heart trouble, arthritis and diabetes. I have heart trouble and stomach problems. I have had part of my stomach removed. The problem is that social security only pays about 80 percent of the medical bills and the medical insurance from White does not pay for outpatient care or office calls. If our health doesn't get worse we may be able to make it without selling our home. However, if we have more medical problems we may have to get some help from welfare.

FURTHER AFFIANT SAYETH NOT.

ROY G. PIERCE

Subscribed and sworn to me this 13th day of November, 1975. — Henry Baron, Notary Public, Hennepin County, Minnesota. My commission expires November 14, 1980.

EXHIBIT A
MINNEAPOLIS-MOLINE
AUTHORIZATION OF MONTHLY
PENSION BENEFITS
Pension Plan for Hourly Employees —
Supplemental Allowance

Name: Roy C. Pierce; Address: 2811 E. 28th St., Minneapolis, MN 55406; Social Security Number: 476-07-5900; Pension Unit: Non-Union; Date of Hire: 8-3-42; Date of Birth: 9-23-05; Age: 64; Service Termination Date: 10-1-69; Credited Service: 26.75; Last Day Worked: 2-28-69; Retirement Date: 10-1-69.

CLASSIFICATION OF RETIREMENT BENEFIT:

( ) NORMAL RETIREMENT

( ) SPECIAL EARLY

( ) DEFERRED VESTED PENSION—Upon attaining Age 65

( ) EARLY RETIREMENT—with payment commencing ( ) At once
( ) At age 65

(X) SUPPLEMENTAL ALLOWANCE

---

1. Years of service at termination (Art. IV) 26.75
2. Monthly benefit: 26.75 years (line 1) x \$5.25 \$140.44

3. Supplemental allowance (\$400 minus line 2 \$140.44) \$259.56
4. Adjustment if service is less than 30 years:
   No. of months less than 30 years 39 x \$1.111 \$43.33
5. Adjusted supplemental allowance (line 3 minus line 4) \$216.23
6. Total benefit (line 2 plus line 3 or line 5 if less than 30 years service) \$356.67
7. 4-1/3 x Base hourly rate \$2.90 x 40 x 70% \$351.84
8. If line 6 exceeds line 7 reduce supplemental allowance by excess \$211.40
9. Actuarial adjustment for option, if selected, applicable to line 2 only (Sec. 6.13):
   a. Employee is 8 years older-younger than spouse
   b. 8 years (line 9a) x 1/2% equals plus-minus 4%
   c. 90% minus 4% equals 86% adjustment factor
10. Monthly benefit (line 2) adjusted for option: \$140.44 line 2 x 86% (line 9c) \$120.78
11. Monthly benefit payable to age 65 (line 2 or line 10 plus line 3 or line 5 minus line 8) \$332.18

I am the "employee" hereinabove named and identified. I have read and understand the calculations above, and accept them as correct. I also agree to restrict my participation in the work force. If my earnings exceed maximum permitted under Social Security Act, my benefits will cease and in certain instances I could be penalized. (See Sec. 6.15(d).) I request that my benefits be paid in accordance with my election indicated on Form 1.

Employee's Signature
Roy G. Pierce

Date 9-15-69

AUTHORIZATION FOR PAYMENT OF MONTHLY PENSION BENEFITS

We have examined the foregoing data and hereby authorize payment of monthly pension benefits of $120.78, as shown item 9 above, and temporary benefits of $211.40, as shown item 11 above, to commence as of 10-1-69.

E. H. SACHS
Pension Committee—
Employer Representative

Date 9-15-69

To: THE CHASE MANHATTAN BANK, Trustee

In accordance with the authorization of the Pension Committee, you are requested to commence payments of monthly pension benefits as indicated above.

S. KISBRULT
Authorized Representative-
MINNEAPOLIS-MOLINE,
INC., Pension Plan for
Hourly Employees

Date: 10/13/69

(Caption)

AFFIDAVIT OF WILLIAM E. PETERS

Mr. William E. Peters being first duly sworn on oath, deposes and says:

1. I am now 65 years old. I presently reside at 405 East 104th Street, Minneapolis.

2. I was a timekeeper and production control clerk for Minneapolis Moline for 30 years. At present I am retired.

3. I started working at Minneapolis Moline February 7, 1941; and retired May 1, 1971, when I was 60 years old.

4. At the time I retired my salary was about $9,500 a year.

5. When I retired I got a letter from Mr. Tuohey of the company saying I would be getting my full pension benefits of $392.11 a month which included a monthly early retirement supplement of about $242.16. The supplement was to be terminated on November 30, 1975, and on December 1, 1975, I was to be receiving my regular monthly pension benefit of $149.95. A true and correct copy of the letter from Mr. Tuohey is attached hereto as Exhibit A. That letter was the summation of a binding contract as far as I was concerned—a contract giving me a retirement income for life.

6. I received the full $392.11 for a little over one year at which time my supplemental benefits were discontinued and my regular pension benefit was cut to $78.41 a month. About one year later I started receiving my full pension benefits again.

7. I never thought that there was any point at which the company could take any of our pension benefits away from us. I've been pretty active in the union and I think I've always understood the provisions of our contracts generally and the things that we bargained for. It was always my understanding that our pension benefits were guaranteed. I just didn't ever feel the company could take any of our pension benefits away from us.

8. After I had worked for the company for about fifteen years I never even considered leaving because I didn't want to lose my pension benefits. I felt that I had been building on something my whole life and my whole life plan was built around that retirement income prospect. If we hadn't had the pension agreement I would have tried to save in another way. I relied very heavily on getting my full pension benefits for life. I didn't even consider purchasing an annuity because I

didn't think it was necessary since I had the pension. If I had known that the company could take our pension benefits away I would have pushed to get higher wages instead of the pension agreement.

9. I now receive my pension benefits of $392.11 but my supplemental benefits will be discontinued at the end of this month. At that time I will receive my regular pension benefit of $149.95.

10. When my pension benefits are cut again to $78.71 a month I'll ha e to get some sort of work if I can. However, that will be difficult because I have a hip injury and I can't work long hours. Yet, I don't think my wife and I can get by on just our monthly social security checks and a $78.71 monthly pension benefit. I am fortunate that my car payments and house mortgage are paid up or I would really be in trouble. But it seems to me that in your retirement years a person should be able to look forward to a trip or two and some recreation rather than having to worry about finding a part time job and making ends meet. I feel that I've earned at least that.

WILLIAM E. PETERS

Subscribed and sworn to before me this 13th day of November, 1975. — Henry Baron, Notary Public, Hennepin County, Minnesota. My commission expires Nov. 14, 1980.

EXHIBIT A

WHITE FARM EQUIPMENT
A Subsidiary of White Motor Corporation
Hopkins, Minnesota 55343 - 612/935-5181

May 13, 1971

Mr. William E. Peters
513 E. Old Shakopee Road
Bloomington, Minnesota 55420

Dear Mr. Peters:

The early pension benefit which you are entitled to receive under the provisions of the Pension Plan amounts to $149.95, plus a supplemental allowance of $242.16 for a total of $392.11 effective May 1, 1971. The supplemental allowance will be terminated as of November 30, 1975 and on December 1, 1975 your regular monthly pension benefit will be $149.95 plus reimbursement for Medicare.

Arrangements have been made with the Chase Manhattan Bank of New York to make the monthly benefit payments. We are attaching their check No. 202096 in the amount of $392.11 covering the month of May, 1971. Future checks will be mailed directly to you on the first of the month by Chase.

Also attached is a set of forms for your personal records. If you fail to receive your checks at any time, please contact your Personnel Department.

Sincerely,
J. E. TUOHEY
Employee Relations Manager

JET/mj
Attachment
cc: Local 1147 Pension Committee
F.M. Boos—L. S. Personnel

(Caption)

AFFIDAVIT OF EMANUEL WALSTROM

Mr. Emanuel Walstrom, being first duly sworn on oath, deposes and says:

1. I am now 63 years old. I presently reside at 3037 30th Avenue South, Minneapolis.

2. I worked for Minneapolis Moline for about 25 years as a machine loader leadman and in production control. I am now retired.

3. I started working at Minneapolis Moline May 18, 1945, and retired in September of 1973, when I was 61 years old.

4. At the time I retired my salary was about $10,000 yearly.

5. When I retired I received a form from the company stating that I would be getting my full pension benefits of $366.67 a month which included a monthly early retirement supplement of about $186.00. I can't really understand why the company gave me the information that my full monthly benefits would be $366.67 when they knew at the time that I would soon be cut to about $90.00 a month. Yet, they didn't even mention the cutback in the forms which I received. A true and correct copy of the form I received from the company when I retired is attached hereto as Exhibit A.

6. I am presently receiving my full monthly pension benefit of $366.67 which includes my early retirement supplement of $186.00. When I am cut to the guarantee letter level my regular pension will be reduced to about $90.00 a month. I will also lose my supplemental benefit which I would otherwise get for two more years.

7. I have been very active in the union. As the president of Local 1147 for fifteen years I often participated in contract negotiations. It was always my understanding that our pension was fully funded by the company. The first time I learned that the fund was low was at the hearing conducted by Senator Mondale in June, 1972.

8. In anticipation of the reduction of my pension benefits to about $90 a month, my family has changed its life style quite a bit. My wife has gone back to work at age 55 which I don't feel is right. My son has had to quit college with less than one year left. I don't feel I can afford to support him through college any more. I have a 14 year old daughter to support and

educate and a home to maintain and with inflation the way it is I'm frankly very worried about the future. I think that after the cut in my pension is put into effect I will still be able to stay off of welfare as long as I don't have any large unexpected expenses such as medical bills. I have ulcers and have already had three treatments for blood clots and vein surgery.

EMANUEL WALSTROM

Subscribed and sworn to before me this 13th day of November, 1975. — Henry Baron, Notary Public, Hennepin County, Minnesota. My commission expires Nov. 14, 1980.

EXHIBIT A

Pension Plan for Hourly Employees
Normal, Supplemental Allowance, T&P, Special Early, Spouse Option

Name: Emanuel V. Walstrom; Address: 3037-30th Ave. S., Minneapolis, MN 55406; Social Security No.: 476-26-6418; Pension Unit: 1147; Date of Hire: 5-18-45; Date of Birth: 3-12-12; Age: 61-7; Service Termination Date: 3/16/73; Credited Service: 27.5; Last Day Worked: 3/12/73; Retirement Date: 10-1-73.

CLASSIFICATION OF RETIREMENT BENEFIT:

( ) NORMAL RETIREMENT
( ) T&P DISABILITY—(SPECIAL EARLY)
( ) DEFERRED VESTED PENSION—Upon attaining age 65
(X) EARLY RETIREMENT—with payment commencing (X) 10-1-73
( ) at age 65
( ) SUPPLEMENTAL ALLOWANCE

1. Monthly benefit: 27.5 years credited service x $6.75 x Applicable Reduction Factor 97.2, $180.42 ($185.63) ($30.00)

2. Supplemental allowance $400 (subject to Reduction):

   a. Number of months service is less than 30 years: (30) $400 - (30 x 1.111) = $366.67

   b. Supplemental reduction for under age 60. (60 divided by number of months under age 65 —— x Line 2a (Sec. 6.15 (b)(2)) = $366.67

   c. 121.33 x base hourly rate $——— = $———

3. Total benefit (if line 2c is less than line 2a or line 2b, use 2c) $366.67

4. Total Supplement (line 3 - line 1) = $186.25

5. Special T&P temporary benefit (Sec. 6.02 (d)(ii) or 6.04 (c)(ii)):

   —— years x $7.50 (not to exceed $187.50) (whether or not payable) $———

6. Supplement (line 4 ——) less Special T&P Temporary benefit (Sec. 6.15(c)) $———

7. Total Supplemental Allowance payable $186.25

8. Actuarial adjustment for option, if selected, applicable to line 1 only (Sec. 6.13):

   a. Employee is —— years in excess of 5 years older-younger than spouse

   b. —— years (line 8a) x 1/2% equals plus-minus ——%

   c. 95% plus-minus ———% equals ——% adjustment factor

9. Monthly benefit (line 1) adjusted for option: $——— x ——% (Line 8c) $———

10. Surviving Spouse Benefit—55% of line 9 = $———

11. Monthly benefit payable to age 65 (line 1 or line 9 plus line 7, and line 5 if payable) $366.67

I am the "employee" hereinabove named and identified. I have read and understand the calculations above and accept them as correct. I also agree to restrict my participation in the work force. If my earnings exceed maximum permitted under the Social Security Act, my benefits will cease and, in certain instances, I could be penalized. (See Sec. 6.15(d)). I request that my benefits be paid in accordance with my election indicated on Form 1.

Employee Signature
EMANUEL V. WALSTROM

Date ————

AUTHORIZATION FOR PAYMENT OF
MONTHLY PENSION BENEFITS

We have examined the foregoing data and hereby authorize payment of monthly pension benefits of $204.12 as shown in item — above, and temporary benefits of $215.88, as shown in item 7 above, to commence as of 10-1-73.

CLIFFORD SNOHECH
Pension Committee—
Employee Representative

Date ————

(Caption)

AFFIDAVIT OF WILLIAM PRESTON

Mr. William Preston, being first duly sworn on oath, deposes and says:

1. I am now 62 years old. I presently reside at 3941 Pillsbury, Minneapolis.

2. I was employed by Minneapolis Moline for about 30 years as a machine operator and in the inspection department. At present I am retired and unemployed.

3. I began work at Minneapolis Moline December 2, 1940, and retired March 31, 1971, at which time I was 57 years old.

4. At the time I retired my salary was about $8,000 a year.

5. When I retired I started receiving my full pension benefit of $172.50 a month. A true and correct copy of the letter which the company gave me when I retired explaining that I would be receiving $172.50 monthly benefits is attached hereto. Later that amount was raised to $187.50 pursuant to the pension plan.

6. I received my full pension benefits for about one and a half years and then my benefits got cut back to $90 a month. I received only $90 a month in pension benefits for about another year. After that I again started receiving my full benefits of $187.50.

7. I had been an officer in the union (IUE) in various capacities until 1954. Although I was never directly involved in negotiations I thought I knew the pension plan as well as anyone. I thought we were improving our station in life by sacrificing part of our paycheck—so much per hour—towards our pensions. In no way did I ever think that any of these pension benefits could be taken away from me. I thought these benefits were guaranteed for life.

8. If I had thought that I might not be getting my full pension benefits I would have taken my father's advice and taken out an annuity.

9. Now I receive my full pension benefits of $187.50 a month. I understand that my benefits will again be cut back to $90. I don't know what I'll do when that happens. Right now my wife and I are just barely getting by at the full benefit

level. I receive $273.10 from social security and she receives $183.10. My wife and I live completely on our social security and my pension benefits. We have no other income. I figure right now that it costs us about $300 a month just for bare necessities. This doesn't include transportation, clothing and social activities. If I have to make any major repairs on my house or have any other unexpected expenses I will be in trouble. Also we have been trying to save some money but we haven't been able to save much at all. With inflation the way it is we are worried that our income, even as it is now, won't be enough to live on soon.

FURTHER AFFIANT SAYETH NOT.

WILLIAM PRESTON

Subscribed and sworn to before me this 13th day of November, 1975. — Henry Baron, Notary Public, Hennepin County, Minnesota. My commission expires Nov. 14, 1980.

EXHIBIT A

MINNEAPOLIS-MOLINE AUTHORIZATION OF MONTHLY DISABILITY PENSION BENEFITS

Pension Plan for Hourly Employees (Form 3)

Name: William B. Preston; Address: 3941 Pillsbury Ave. So., Mpls., Minn. 55409; Social Security Number: 475-03-1720; Pension Unit: 932; Date of Hire: 12-2-40; Date of Birth: 8-22-13; Age: 57; Service Termination Date: 3-31-71; Last Day Worked: 3-20-70; Retirement Date: 4-1-71.

TOTAL AND PERMANENT DISABILITY PENSION BENEFIT:

1. Date of Proof of Disability received by the Pension Committee 3-20-70.

2. First day of total and permanent disability 3-21-70.

3. First day of total and permanent disability benefits 3-21-71.

4. Years of credited service 30 (Sec. 4.01).

5. Montly retirement benefit *prior* to Age 65: and/or while ineligible for unreduced Social Security benefits.

a. Gross monthly retirement benefit: 30 yrs. (line 4) x \$5.75 = \$172.50

b. Less: Monthly deductions under Sec. 6.05 of the Plan. (Describe) ———— \$————

c. Additional temporary benefits: (Sec. 6.04(c)(ii)) —— yrs. (line 4) x \$———— = \$————

d. Monthly disability retirement benefit from Plan \$————

6. Monthly retirement benefit *after* Age 65: or when eligible for unreduced Social Security benefits.

a. Gross monthly retirement benefit: —— yrs. (line 4) x \$———— = \$————

b. Less: Monthly deductions under Sec. 6.05 of the Plan. (Describe) ———— \$————

c. Monthly disability retirement benefit from Plan \$172.50

I hereby certify that the data used in the calculation of the MONTHLY DISABILITY RETIREMENT BENEFITS are as shown on our records and that the calculation of such benefit as shown in line 5 and d and/or line 6c is correct.

Date ————

————————————

Personnel Department—
Minneapolis-Moline, Inc.

I am the "employee" hereinabove named and identified. I have read and understand the calculations above, and accept them as correct.

Employee's Signature
WILLIAM B. PRESTON

Date 3-10-71

AUTHORIZATION FOR PAYMENT OF
MONTHLY PENSION BENEFITS

We have examined the foregoing data and hereby authorize payment of monthly pension benefits of \$172.50, as shown in line 5a and/or 6c above, and temporary benefits of \$none as shown in item 5c above, to commence as of April 1, 1971. The monthly pension above shown shall be payable during lifetime until Age 65 at which age a re-determination shall be made in accordance with provisions of the Minneapolis-Moline, Inc. Pension Plan for Hourly Employees, Sec. 6.04.

FRED BOOS
Pension Committee—
Employer Representative

CLIFFORD SNOHECH
Pension Committee—
Employee Representative

Date 3-10-71

To: CHASE MANHATTAN BANK, Trustee

In accordance with the authorization of the Pension Committee, you are requested to commence payments of monthly pension benefits as indicated above.

————————————

Authorized Representative-
MINNEAPOLIS-MOLINE, INC., Pension Plan for Hourly Employees

(Caption)

AFFIDAVIT OF MILDRED MacDONALD

Mrs. Mildred MacDonald, being first duly sworn on oath, deposes and says:

1. I am now 62 years old. I presently reside at 3832 29th Avenue South, Minneapolis.

2. My husband, George MacDonald, worked for Minneapolis Moline in the parts department and on the assembly line for about 42 years. He retired in May of 1972 at age 60.

3. My husband died on November 7, 1972.

4. At the time he retired his salary was about $8,000 a year.

5. When my husband retired he began receiving his full monthly pension benefits of about $185.00. In the summer of 1972 these benefits were drastically cut. I can't remember the exact figure his benefits were cut to but I think it was around $75 or $80.

6. When my husband died I was supposed to receive $103.37 a month in widow's benefits. The reason I was to receive these benefits was because my husband had elected to have his monthly pension benefit reduced so that I could receive some benefits after he died. However, after my husband died I only received $43.00 a month till the next spring or summer.

7. My husband and I had never thought that we would not receive his full pension benefits and my full widow's benefits. We really relied on these pension benefits. Had we known that these pension benefits were not ours for sure we would certainly have made other investments and saved in other ways. Shortly before my husband's benefits were cut we took out a mortgage on our house and used part of that loan to purchase a small dry cleaning business. We thought it would help me get by if something happened to him.

8. I wish now that my husband had taken my advice and switched to a civil service job because there is more security in those jobs. However, in later years he wouldn't consider leaving Minneapolis Moline because of his seniority and pension benefits.

9. Now I receive $103.37 monthly as my widow's pension benefit. If I am cut back to $40 per month it will create a real financial crisis for me. I have a twenty-six year old son whom I must support because he is emotionally disturbed. I get no help from the state to support him and I hope I can continue to support my son and myself in the future. However, my dry cleaning business is not doing well. Some months last year, due to various expenses, I didn't take anything home from the business. The most I took home in any month was $200. I do get my social security of $222.10 a month but I also have about $100 a month monthly mortgage payments to make. I'm just not sure how I'll get by when my widow's pension benefits are cut.

FURTHER AFFIANT SAYETH NOT.

MILDRED MacDONALD

Subscribed and sworn to before me this 13th day of November, 1975. — Henry Baron, Notary Public, Hennepin County, Minnesota. My commission expires Nov. 14, 1980.

(Caption)

AFFIDAVIT OF DONALD W. DUFFY

Mr. Donald W. Duffy, being first duly sworn on oath, deposes and says:

1. I am now 64 years old. I presently reside at 3551 Irving Avenue, North, Minneapolis.

2. I was a machine operator and gear cutter for Minneapolis Moline for 36 years but I'm presently retired and unemployed.

3. I started working at Minneapolis Moline March 8, 1935, and retired October 1, 1971, when I was 60 years old.

4. At the time I retired my salary was about $10,000.

5. When I retired I got a sheet from the company saying I would be getting my full pension benefits of $400 a month which included a monthly early retirement supplement of about $200. I also talked with a Mr. Voss or Foss from the company who explained how my pension benefits were calculated. He also told me I would be getting total $400 monthly benefits. After that I thought I'd be getting these pension benefits for life except for supplemental benefits which I would get only until I reached 65 in 1976. A true and correct copy of the sheet which I received from the company when I retired is attached hereto as Exhibit A.

6. I did get the full $400 monthly benefit for almost a year at which time the supplemental benefits were discontinued and my regular pension benefit got cut back to $83 a month. I received only $83 a month in pension benefits for about a year. During that time I used up about half of my savings in order to get by.

7. I always thought that these pension benefits were going to be mine no matter what. I never thought that the company might take these benefits away from me.

8. Had I known that these benefits were not guaranteed I might have quit the company and gone to work somewhere else. During the last three years of my employment there, I was ready to quit any time because working conditions were rotten. However, I thought of my pension and decided to stick by my job there. I had too much seniority built up to give it up at that time of my life.

9. In 1969 or 1970 I had a chance to go to a gear shop in St. Cloud. That shop contacted several fellows at the plant through the recommendation of another gear man, Lane, I believe. I turned them down because of the pension benefits I anticipated receiving. I don't remember the name of the shop but I understand that they are now cutting gears for White Motor Company.

10. I now receive $400 a month pension benefits from the company. My supplemental benefits of about $200 will be discontinued in due course. Now I understand that my regular pension benefits of about $200 will again soon be cut to $83 a month. When my pension benefits get cut to $83 a month, I will have to sell my lake cabin. Selling my lake cabin would be a real tragedy for me because it is so much a part of my life. It's really like a second home. Fifteen other men who I have worked with all my life also own cabins in the area. But even more important to me, my boys and my grandchildren love the place the spend a lot of time there. If I had to sell the cabin I would not get to see my faimily that often. Really our family life revolves around that cabin. If I sold the cabin, my wife and I could probably get by if she continued to work. Right now she works full time. She takes home about $400 a month and I get $244 a month from social security. I think if my pension benefits were reduced to $83 a month, we could get by if I sold the cabin and if my wife can continue to work full time.

FURTHER AFFIANT SAYETH NOT.

Dated: 11-7-75.

DONALD W. DUFFY

Subscribed and sworn to me this 7th day of Nov. 1975. — R. J. Knutson, Notary Public.

EXHIBIT A

MINNEAPOLIS-MOLINE
APPLICATION FOR A PENSION BENEFIT
AND ELECTION OF MONTHLY PENSION OPTION
Pension Plan for Hourly Employees (Form 1)

Employee's Name: Donald W. Duffy; Clock No.: 1012; Social Security No.: 468-07-8420; Pension Unit: 932.

A. I hereby make application for a pension benefit under the provisions of the Minneapolis-Moline, Inc. Pension Plan for Hourly Employees as follows:

1. ( ) NORMAL RETIREMENT at or after age 65.
2. (X) EARLY RETIREMENT between age 60 and 65; payments to commence, NOW (X) at age 65 ( ).
3. ( ) EARLY RETIREMENT between age 55 and 60; payments to commence, NOW ( ) at age 65 ( ).
4. ( ) TOTAL AND PERMANENT DISABILITY RETIREMENT. Total and permanent disability began ________.
5. ( ) DEFERRED VESTED PENSION upon attaining age 65.

B. It is my intention to retire on 10-1-71.

I wish to have my monthly retirement benefit payments commence in accordance with the provisions of the Minneapolis-Moline, Inc. Pension Plan for Hourly Employees.

Participant's Signature
DONALD W. DUFFY

Date 9-30-71.

C. ELECTION OF MONTHLY PENSION OPTION. (Check appropriate box below.)

In accordance with and subject to the provisions of the Minneapolis-Moline Pension Plan, I hereby elect to have the pension to which I am entitled (Line 7 or Line 10, Form 2) paid in the form indicated below:

(X) SURVIVING SPOUSE OPTION.

I hereby designate as my Contingent Annuitant (Name) Marcella J. Duffy (Relationship) wife, who I certify was born on (Date) 4-24-17 and was married to me on (Date) 4-26-41.

A Surviving Spouse Benefit equal to 55% of my monthly benefit will be continued to my Contingent Annuitant after my death.

It is understood that this election, if approved, will be automatically cancelled if I die prior to the due date for my first pension payment, in which event no payments whatsoever will be made to the Contingent Annuitant, or if the Contingent Annuitant dies prior to said due date, in which event payments will be made to me as though I had not elected this option.

( ) LIFE ONLY BENEFITS.

I choose not to elect the foregoing option. It is understood that my pension payments under the Pension Plan will be paid during my lifetime in a level amount, subject to the deductions set forth in the plan, and that no payments will be made after my death.

IT IS UNDERSTOOD THAT THE CHOICE I HAVE MADE BY CHECKING ONE OF THE ABOVE BOXES IS IRREVOCABLE AND CANNOT BE RESCINDED OR CHANGED BY ME.

DONALD W. DUFFY
Participant's Signature

UNITED STATES DISTRICT COURT

(Caption)

MEMORANDUM AND ORDER

CURTIS L. ROY, Esq., and PETER HENDRIXSON, Esq., Dorsey, Marquart, Windhorst, West & Halladay, Minneapolis, Minnesota, together with FRANK C. HEATH, Esq., Jones, Day, Reavis & Pogue, Cleveland, Ohio, appeared for the plaintiffs.

Warren Spannaus, Attorney General, State of Minnesota, by JAMES P. GERLACH, Esq., RICHARD S. SLOWES, Esq., and KATHRYN RUSH, Esq., Special Assistant Attorneys General appeared for the defendant.

This matter is presently before the court on motions by all parties. Plaintiffs are seeking a summary judgment, or in the alternative, a preliminary injunction on Count I of the Amended Complaint; defendant is requesting the court to abstain. Plaintiffs have brought this action challenging the constitutionality of the Minnesota Private Pension Protection Act, Minn. Stat. § 181B.01 *et seq.* (1974) (hereinafter the "Minnesota Pension Act").

Plaintiff White Motor Corporation (hereinafter "White Motor") is an Ohio corporation with its principal place of business in Cleveland, Ohio. White Farm Equipment Company (hereinafter "White Farm") is a Delaware corporation with its principal place of business in Oakbrook, Illinois and is a wholly owned subsidiary of White Motor.

The defendant, E. I. Malone, is the Commissioner of Labor and Industry for the State of Minnesota and is obligated to perform certain duties under the Minnesota Pension Act.

The facts giving rise to the dispute between the parties are lengthy. In 1962, White Motor organized a subsidiary, Minneapolis-Moline, Inc. Minneapolis-Moline, Inc. on January 1, 1963 acquired the assets of Motec Industries, Inc. (formerly called the Minneapolis-Moline Company) which had operated farm manufacturing plants at Hopkins, Minnesota and Minneapolis, Minnesota, on Lake Street. In 1969 Minneapolis-Moline, Inc. changed its name to White Farm. White Farm still operates the Hopkins plant but closed the Lake Street plant in June, 1972.

In 1950, a pension plan was established for the employees of the predecessor of White Farm. This pension plan was carried forward in some form in each of the subsequent years that collective bargaining agreements were entered into: 1954, 1959, 1962, 1965, 1968 and 1971. Since 1955, the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America and certain of its local unions (hereinafter collectively referred to as the "UAW") have been the bargaining representatives for production and maintenance employees and clerical employees at the Lake Street and Hopkins plants.[1] Pension benefits resulting from collective bargaining agreements continued to increase after the purchase of Motec Industries by White Motor in 1963.

The 1971 version of the pension plan is the plan pertinent to this action. The 1971 plan contained a provision, first inserted in the 1968 plan, requiring the funding of unpaid past service liability. Unpaid past service liability is at any given time, the excess of the accrued liability of the pension fund over the present value of the assets of the fund. The 1971 plan provided:

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[1] Prior to 1955, the employees were represented by Local 1146 of the United Electrical, Radio and Machine Workers of America.

Section 9.05

The unfunded net deficiency as of January 1, 1971 shall to amortized over a thirty-five (35) year period from January 1, 1971. The deficiencies resulting from benefit increases effective January 1, 1972 and January 1, 1973 shall be funded uniformly over a thirty-five (35) year period from January 1, 1972 and January 1, 1973 respectively.

Deferred funding of past service liability is a common feature of pension plans. In essence, past service liability is met by continued business operations and continued contributions by the employer to the pension fund. If the plan is terminated, the pension fund will not be increased and as a result some past service liability will remain unfunded.

In language unchanged since the 1950 pension plan, the 1971 plan provided for the payment of pensions as follows:

Section 6.09—Source of Pensions

Pensions shall be payable only from the Fund and rights to pensions shall be enforceable only against the Fund.

* * * *

Section 6.17—No Other Benefits

No benefits other than those specifically provided for are to be provided under this Plan. No employee shall have any vested right under the Plan prior to his retirement and then only to the extent specifically provided herein.

* * * *

Section 9.04—Rights of Employees in the Fund

No employees, participant or pensioner shall have any right to, or interest in, any part of any Trust Fund created hereunder, upon termination of employment or otherwise, except as provided under this Plan and only to the extent therein provided. All payments of benefits as provided for in this Plan shall be made only out of the Fund or Funds of the Plan and neither the Company nor any Trustee nor any Pension Committee or Member thereof shall be liable therefor in any manner or to any extent.

During the 1968 and 1971 negotiations with UAW, Pension Guarantees applicable to the Lake Street and Hopkins plants were given by White Motor. These Guarantees provided that, upon termination of the pension plan, benefits were guaranteed by White Motor at a designated benefit level. By giving the Guarantees, White Motor assumed a direct liability of approximately $7,000,000.

After suffering substantial losses from 1969 to 1971 at its Minneapolis-Moline Division, White Motor in January, 1972 informed the UAW that it intended to close its Minneapolis-Moline plants. Operations at the Lake Street plant were terminated in June 1972 and the plant was closed and the building subsequently razed. Operations at the Hopkins plant have continued.

Section 10.02 of the pension plan provided that "[t]he Company shall have the sole right at any time to terminate the entire Plan." Relying on this language, White Motor attempted to terminate the pension plan on June 30, 1972. The UAW challenged White Motor's attempt to terminate the plan prior to expiration of the collective bargaining agreement. An arbitrator's award and subsequent litigation upholding that award determined that the plan could not be terminated until the expiration of the collective bargaining agreement on May 1, 1974.[2] The pension plan was thereafter terminated on May 1, 1974.

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[2] *See, International Union Etc. v. White Motor Corp.*, 505 F.2d 1193 (8th Cir. 1974).

At the time the Lake Street plant was closed, the pension fund was only partially funded and there was a net deficiency in the fund of approximately $14,000,000.

As of January 1, 1975 there were 981 retirees under the pension plan and 233 persons eligible for deferred pensions by reason of having attained age 40 and 10 years of service at the time of the termination of their employment with White Farm. In addition there were 44 terminated employees who at the time of the termination of their employment had 10 years of service but had not attained the age of 40. Ten years of continuous service is the minimum number of years an employee must have worked for White Motor before becoming eligible for benefits under the plan, but to be so eligible, he must also have attained the age of 40. As of January 1, 1975 there were 260 active employees at the Hopkins plant who were participants in the plan.

On April 10, 1974, the Minnesota Pension Act, Minn. Stat. § 181B.01 *et seq.*, was enacted into law. The title of the Act describes it as

> "[a]n act relating to private pensions; imposing an obligation upon certain employers who terminate pension plans; providing for the enforcement and method of payment of such obligations." Minn. Laws 1974, ch. 437.

Minn. Stat. §§ 181B.03-.06 impose a "pension funding charge" directly against any employer who ceases to operate a place of employment or a pension plan. Such charge shall be equal in amount to the vested and nonvested benefits described in the statutory provisions. These sections essentially provide that any employee who has completed ten or more years of credited service under a pension plan has, upon termination of that plan or of his place of employment, an automatically vested right to all pension benefits he would have

received had the particular plan not been terminated or had the place of business not been closed.

Minn. Stat. §§ 181B.09-.12 provide that the Commissioner of Labor and Industry, after investigation, shall certify amounts owing by an employer. That certified amount is declared, under § 181B.11, to "be a lien upon the employer's assets." The pension funding charge is used to purchase an annuity payable to the employee when he reaches normal retirement age.

Pursuant to the provisions of the Pension Act, Malone notified White Motor and White Farm on August 18, 1975 that they owed a pension funding charge of $19,150,053.

Plaintiffs contend that the Pension Act conflicts with the pension plan in the following manner: (1) the Act provides employees vested rights to pension benefits which would not be available under the plan. Compare §§ 181B.03-.06 with Sections 6.17 and 9.04 of the plan, (2) to the extent of any deficiency in the pension fund, the Act requires satisfaction of pension benefits from the general funds of the employer. §§ 181B.03-.06. The pension plan provides that benefits shall be paid only out of the pension fund and that the Company shall not be liable to any extent. Sections 6.09 and 9.04 of the plan; and (3) the Act completely changes the consequences of terminating the pension plan.

PROCEDURAL POSTURE

Plaintiffs filed their original complaint in May, 1975 alleging that the Minnesota Pension Act is unconstitutional on several grounds. In July, 1975 plaintiffs amended their complaint to include an allegation that the Act is in conflict with the provisions and policies of the NLRA and thus is preempted under the Supremacy clause of the United States Constitution.[3]

[3] Art. VI, cl. 2.

Plaintiffs have moved for a partial summary judgment solely on their preemption claim. Fed.R.Civ.P. 56. In the alternative, plaintiffs seek a preliminary injunction, also based only on the preemption claim, to enjoin the enforcement of the Minnesota Pension Act by the defendant. Defendant has moved the court to abstain from hearing this action pending state construction of the Minnesota Pension Act.

The plaintiffs' amended complaint seeks only a declaratory judgment that the Pension Act is invalid. The motion for partial summary judgment for declaratory relief is properly heard by a single judge. Plaintiffs' alternative request for a preliminary injunction is carefully based only on preemption. A request for an injunction based on a preemption challenge to a state statute does not require the convening of a three-judge court. *Swift & Co. v. Wickham*, 382 U.S. 111 (1965). Furthermore, where a statute is challenged both on preemption grounds and other constitutional grounds, the court, sitting as a single judge, should decide the preemption issue first. *Hagans v. Lavine*, 415 U.S. 528 (1974).

The scope and the basis of relief sought is significant for it differs with the relief sought in *Fleck, et al. v. Spannus, et al*, File No. 3-75 Civ. 178, also issued today. The court expended considerable effort in attempting to place the two cases in an identical procedural posture and reluctantly concludes that its attempt to produce a "Brobdingnagian" result was unsuccessful.[4]

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[4] Professor Chafee once wrote, "The King of Brobdingnag gave it for his opinion that, 'whoever could make two ears of corn, or two blades of grass to grow upon a spot of ground where only one grew before, would deserve better of mankind, and do more essential service to his country than the whole race of politicians put together.' In matters of justice, however, the benefactor is he who makes one lawsuit grow where two grew before." *Bills of Peace with Multiple Parties*, 45 Harv.L.Rev. 1297 (1932).

Fed.R.Civ.P. 56(c) provides that summary judgment is proper where "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

Minnesota Bearing Co. v. White Motor Corp., 470 F.2d 1323 (8th Cir. 1973), sets forth the standard for the issuance of a preliminary injunction:

> In order to justify the issuance of a preliminary injunction by the trial court, the movant has the burden of showing: (1) substantial probability of success at trial by the moving party, and (2) the irreparable injury to the moving party absent such issuance. Other factors which may be considered in the decision to grant or to deny the request are the absence of substantial harm to other interested parties, and the absence of harm to the public interest.

470 F.2d at 1326.

The court will examine defendant's motion to abstain before considering plaintiffs' alternative motions of summary judgment or preliminary injunction.

ABSTENTION

Defendant has moved for abstention on the grounds that state administrative or court proceedings may eliminate or substantially modify plaintiffs' federal challenge to the Act.

Abstention cases have generally ". . . dealt with unresolved questions of state law which only a state tribunal could authoritatively construe." *Wisconsin v. Constantineau*, 400 U.S. 433, 438 (1971). Abstention is justified where the state statute is susceptible to a clarifying construction that would alter or eliminate the constitutional question. *Lake Carriers' Ass'n v. MacMullan*, 406 U.S. 498, 510 (1972); *Zwickler v. Koota*, 389 U.S. 241, 249 (1967). It is not proper to abstain

". . . simply to give state courts the first opportunity to vindicate the federal claim." *Zwickler v. Koota, supra* at 251.

Defendant has failed to indicate to the court any statutory provisions involved in this case which might be construed by a state court so as to modify the federal question being considered. Nor has defendant contended that the state administrative proceeding might relieve plaintiffs of any liability. The present controversy requires the court to construe a federal law, a task which is best performed by a federal court. *See Chemical Specialties Manufacturers Ass'n v. Lowery*, 452 F.2d 431, 433 (2d Cir. 1971).

Accordingly, defendant's motion to abstain will be denied.

SUMMARY JUDGMENT

Plaintiffs contend that they are entitled to summary judgment on the grounds that the Minnesota Pension Act is in conflict with, and preempted by, the provisions and policies of the National Labor Relations Act, as amended, 29 U.S.C. §§ 151, 157, 158(a)(5), 158(b)(3), and 158(d). Section 7 of the National Labor Relations Act, 29 U.S.C. § 157, (hereinafter NLRA) establishes the right of employees to form and join labor organizations and to bargain collectively through representatives of their own choosing. Sections 8(a)(5), 8(b)(3) and 8(d) of the NLRA require employers and labor organizations to bargain in good faith with respect to "wages, hours and other terms and conditions of employment. . . ."

It has been established that pension plans fall within the category of "wages and other terms and conditions of employment", and are therefore mandatory subjects of bargaining under the NLRA. *Inland Steel Co. v. NLRB*, 170 F.2d 247 (7th Cir. 1948), *cert. denied* 336 U.S. 960 (1949). Plaintiffs assert that since they were required to bargain in good faith over pension benefits and having reached an agreement on a pension plan, a state statute which conflicts with the terms of that agreement infringes on the national policy of collective bargaining and thus has been preempted under the Supremacy clause by the statutes embodying federal labor policy.

The concept of preemption was explained in *Amalgamated Ass'n of Street Employees v. Lockridge*, 403 U.S. 274, 285-286 (1971), where the Court stated:

> The constitutional principles of preemption, in whatever field of law they operate, are designed with a common end in view: to avoid conflicting regulation of conduct by various official bodies which might have some authority over the subject matter.

The method for determining whether a conflict exists has been addressed by the Supreme Court:

> Deciding whether a state statute is in conflict with a federal statute and hence invalid under the Supremacy Clause is essentially a two-step process of first ascertaining the construction of the two statutes and then determining the constitutional question whether they are in conflict.

Perez v. Campbell, 402 U.S. 637, 644 (1971).

Construction of the Statutes

The Minnesota Pension Act has not been construed by any judicial body—state or federal. However an analysis of the Act indicates the protection it seeks to provide.

The title of the Act describes it as

> "[a]n act relating to private pensions; imposing an obligation upon certain employers who terminate pension plans; providing for the enforcement and method of payment of such obligations." Minn. Laws 1974, ch. 437.

Through the imposition of a "pension funding charge", the act protects employees with ten or more years of credited

service under a pension plan from forfeiture of those pension benefits. Minn. Stat. §§ 181B.03-06. The protection is provided by using the pension funding charge to purchase an annuity that will provide the protected employee with monthly pension benefits after his normal retirement age. Minn. Stat. § 181B.12. The pension funding charge is assessed directly against the employer when it ceases to operate a place of employment in Minnesota leaving a substantial number of employees unemployed, or if it terminates a pension plan. Minn. Stat. §§ 181B.03-.06.

The NLRA has been authoritatively construed by the Supreme Court on numerous occasions. It has been described as "... a comprehensive code passed by Congress to regulate labor relations in activities affecting interstate and foreign commerce." *Nash v. Florida Industrial Commission*, 389 U.S. 235, 238 (1967).

The NLRA is

> "... designed to promote industrial peace by encouraging the making of voluntary agreements governing relations between unions and employers. The Act does not compel any agreement whatsoever between employees and employers. Nor does the act regulate the substantive terms governing wages, hours and working conditions which are incorporated in an agreement." [footnotes omitted]

Labor Board v. American National Insurance Co., 343 U.S. 395, 401-402 (1952); *See Labor Board v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 45 (1937).

Question of Conflict

With the construction of the statutes considered, the question presented is whether state regulation of pensions is in conflict with and thus preempted by the NLRA and its policies.

1. Labor Law Preemption

The well developed law surrounding labor preemption has focused on primarily two areas: (1) regulation of labor-management relations and labor disputes, and (2) regulation of conduct of a union towards an individual member. *See* Cox, *Labor Law Preemption Revisited*, 85 Harv. L. Rev. 1337 (1972). As a consequence, the "test" for determining whether State decisional or statutory law is preempted is a result of litigation in those areas. The principles established in those cases are helpful in analyzing the claims of the plaintiffs herein, but nonetheless the court is still left with a case of first impression concerning the permissable extent of state regulation of employee pension funds.

The established standard for labor law preemption was enunciated in *San Diego Building Trades Council v. Garmon*, 359 U.S. 236 (1959). In *Garmon* the Supreme Court overturned a state court's award of damages for economic injuries resulting from peaceful picketing. The status of the picketing was uncertain under the NLRA, since the Labor Board had not ruled on the question. The court explained its restriction on state court jurisdiction saying:

> When it is clear or may fairly be assumed that the activities which a State purports to regulate are protected by § 7 of the National Labor Relations Act, or constitute an unfair labor practice under § 8, due regard for the federal enactment requires that state jurisdiction must yield. To leave the states free to regulate conduct so plainly within the central aim of federal regulation involves too great a danger of conflict between power asserted by Congress and requirements imposed by state law. . . .
>
> At times it has not been clear whether the particular activity regulated by the States was governed by § 7 or

§ 8 or was, perhaps, outside both these sections. . . . When an activity is arguably subject to § 7 or § 8 of the Act, the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board if the danger of state interference with national policy is to be averted.

The *Garmon* "arguably protected or prohibited" test was reaffirmed in *Amalgamated Ass'n of Street Employees v. Lockridge*, 403 U.S. 274 (1971), in the context of an employee-union controversy.

Section 7 proscribes the protected rights of employees. There are no employees party to the present action contending that their rights have been interfered with.

Section 8 of the NLRA requires employers and labor organizations to bargain in good faith over "wages, hours and other terms and conditions of employment. . .", which would include pensions.

The employers duty to bargain in good faith over pensions is not altered by the Pension Act. The Pension Act does not require labor and management to agree to a pension plan or that specific provisions be included in a pension plan.

The NLRA does not regulate the substantive terms of a collective bargaining agreement. *Labor Board v. American National Insurance Co., supra* at 402.

The danger addressed in *Garmon* is not presented by the facts of the present action. The state is not attempting to regulate a subject matter which lies within the exclusive competence of the National Labor Relations Board. The Pension Act does not

> ". . . regulate conduct so plainly within the central aim of federal regulation involv[ing] too great a danger of conflict between power asserted by Congress and require-

> ments imposed by state law. . . ." *Garmon, supra*, at 244.

2. Congressional Intent

Although the Pension Act does not seem on its face to conflict with the regulatory scheme of the NLRA, it is nonetheless the court's function

> ". . . to determine whether [the] challenged state statute 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.' *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941). [further citations omitted]

Perez v. Campbell, supra at 649.

Plaintiffs contend that the purpose and objective of Congress which is being frustrated by the Pension Act is the collective bargaining process. This frustration allegedly occurs because labor and management agreed to a provision in a collective bargaining agreement covering the termination of the pension plan and now the State of Minnesota seeks to apply a law which would effectively alter the agreed-to provision.

A court cannot ". . . declare preempted all local regulation that touches and concerns in any way the complex interrelationships between employers, employees, and unions; obviously much of this is left to the States." *Lockridge, supra* at 289. It is recognized that Congress developed its special framework of labor laws within a larger context of state laws which provide for rights of property, public order and the promotion of public health and welfare. Cox, *Labor Law Preemption Revisited, supra*, at 1355.

In examining Congressional intent it should be recognized that "the principle of pre-emption that informs our general national labor law was born of [the Supreme] Court's efforts, without the aid of explicit congressional guidance. . . ." *Lockridge, supra* at 286. Although Congress has not given explicit

guidance in the NLRA of the extent that it desired to preempt state laws of the type here being challenged, it has given indications in other laws that legislation and regulation by the States of various subject matter would be permissible.

For example, Congress indicated in the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* that States could establish a higher minimum wage than was required by federal law.[5] Such state requirements can be imposed even though wages are a mandatory subject of collective bargaining.

In a similar vein, the Supreme Court looked to Congress' affirmative indications in another enactment when it held that an employee could bring an action in state court against his employer for breach of a collective bargaining agreement even though the employer's action was an unfair labor practice under Section 8 of the NLRA and thus within the jurisdiction of the National Labor Relations Board. *Smith v. Evening News Association*, 371 U.S. 195 (1962).

Relevant to the state statute being challenged by the plaintiffs was the expression of Congressional intent for state regulation of pensions when Congress enacted the Welfare and Pension Plans Disclosure Act (hereinafter the "Pension Dis-

[5] Section 18(a) of that Act, 29 U.S.C. § 218(a) provides as follows:
> No provision of this chapter or of any order thereunder shall excuse noncompliance with any Federal or State law or municipal ordinance establishing a minimum wage higher than the minimum wage established under this chapter or a maximum workweek lower than the maximum workweek established under this chapter, and no provision of this chapter relating to the employment of child labor shall justify noncompliance with a Federal or State law or municipal ordinance establishing a higher standard than the standard established under this chapter. No provision of this chapter shall justify any employer in reducing a wage paid by him which is in excess of the applicable minimum wage under this chapter, or justify any employer in increasing hours of employment maintained by him which are shorter than the maximum hours applicable under this chapter.

closure Act"), 29 U.S.C. § 301 *et seq.*[6] Congress expressly provided that states should remain free to become involved in the regulation of pension plans when it stated:

> The provisions of this chapter . . . shall not be held to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law . . . of any State affecting the operation or administration of employee . . . pension benefit plans. . . .

29 U.S.C. § 309(b).

The legislative history of the Pension Disclosure Act further emphasizes the regulatory power retained by the states. The Senate Report stated:

> . . . [The Pension Disclosure Act] is a disclosure statute and by design endeavors *to leave regulatory responsibility to the States.*
>
> * * *
>
> . . . It is designed to place the primary responsibility for the policing and improved operations of these plans upon the participants themselves, with a minimum of interference in the natural development and operation of such plans, *to leave to the States the detailed regulations relating to insurance, trusts, and other phases of*

[6] The Pension Disclosure Act was the controlling pension statute in effect when the Minnesota Pension Act was enacted. Subsequently, the Employee Retirement Income Security Act (ERISA), a comprehensive pension reform law, was enacted by Congress. 29 U.S.C. § 1001 *et seq.* ERISA specifically repealed the Pension Disclosure Act, 29 U.S.C. § 1031, and replaced it with new reporting and disclosure provisions. 29 U.S.C. §§ 1021 - 1031.

ERISA also sought to avoid all future questions of preemption by specifically providing for the superseding of all state laws relating to employee benefit plans. 29 U.S.C. § 1144. Since ERISA with its preemption provision was enacted after the occurrences which give rise to the present case before the court, plaintiffs have not sought to avail themselves of any of its provisions or legislative history. Compare with *Fleck, et al v. Spannus, et al.*, File No. 3-75 Civ. 178, also issued today.

> *their operations*, and to place the least possible burden by way of cost and otherwise upon the plans and upon the Federal Government. [emphasis added]

S. Rep. No. 1440, 85th Cong., 2d Sess. (1958), 1958 *U.S. Code Cong. and Adm. News* 4137, 4153-4154.

Moreover, Congress was specifically aware that pension plans were often the product of the collective bargaining process. *See, e.g.*, S. Rep. No. 1440, 85th Cong., 2d Sess. (1958), 1958 *U.S. Code Cong. and Adm. News* 4137, 4143-4144; H. Rep. No. 2283, 85th Cong., 2d Sess. (1958), 1958 *U.S. Code Cong. and Adm. News* 4181, 4188-4189. Thus Congress was not unmindful that it was permitting States to regulate a subject matter which was the product of collective bargaining.

3. Collective Bargaining Agreement

Plaintiffs assert that a state's attempt to regulate a subject matter of collective bargaining, such as employee pensions, should not be permitted where that regulation conflicts with the collective bargaining agreement.

In support of their position, plaintiffs place heavy reliance on *Local 24, Teamsters v. Oliver*, 358 U.S. 283 (1959).

In *Oliver* a group of local labor unions had entered into a collective bargaining agreement with a group of interstate motor carriers providing the wage scale for truck drivers and the minimum rental for drivers who used their own vehicles. A state court enjoined certain carriers and a local union from carrying out the minimum rental provision on the grounds that it violated state anti-trust law. However, the Supreme Court held that state antitrust law could not be applied to prohibit the parties from carrying out the terms of its collective bargaining agreement. The Court stated:

> To allow the application of the Ohio antitrust law here

> would wholly defeat the full realization of the congressional purpose. The application would frustrate the parties' solution of a problem which Congress has required them to negotiate in good faith toward solving, and in the solution of which it imposed no limitations relevant here.

358 U.S. at 295-296.

State antitrust statutes present unique problems in the area of labor preemption. The Supreme Court has consistently held that the NLRA precludes their application to appropriate labor union activities. *See, e. g. Connell Construction Co. v. Plumbers & Steamfitters*, 421 U.S. 616 (1975); *Weber v. Anheuser-Busch, Inc.*, 348 U.S. 468 (1955). Antitrust laws are designed primarily to apply to business combinations and their application to collective action by employees would produce a direct conflict with the national labor policy. The Court has stated that:

> [p]ermitting state antitrust law to operate in [the labor] field could frustrate the basic federal policies favoring employee organization and allowing elimination of competition among wage earners, and interfere with the detailed system Congress has created for regulating organizational techniques.

The inherent conflict and delicate balance which exists between labor and antitrust policy does not exist between labor policy and the regulation of pensions. Congress, in formulating its policies, has indicated that states may regulate pensions. Accordingly, the court concludes that the Minnesota Pension Act does not necessarily stand as an obstacle to the accomplishment of the purposes and objectives of Congress. The broad language of *Oliver* does not require the striking down of the Pension Act.

Plaintiffs have also relied on the following cases which merit comment: *Railway Employees' Dept. v. Hanson*, 351 U.S. 225 (1956); *California v. Taylor*, 353 U.S. 553 (1957); *United Airlines, Inc. v. Industrial Welfare Comm'n*, 211 C.A. 2d 729, 28 Cal. Rptr. 238 (1963). Although it may not be a significant distinction, all of the above cases were decided under the Railway Labor Act, 45 U.S.C. § 151 *et seq*. An important distinction, however, is that none of the cases dealt with a state's efforts to regulate a subject matter which Congress had specifically indicated they could regulate. The court also finds persuasive the distinction of the cases on their facts and the quality of state regulation involved as argued by the defendant in its supporting memoranda.

Based upon the foregoing, the court is not persuaded that the NLRA and its policies preempt the state regulation of pensions embodied in the Minnesota Pension Act. The court is not ruling on the validity of the Pension Act vis-a-vis any other law or constitutional provision since none has been presented to it. Plaintiffs' motion for summary judgment will be denied.

PRELIMINARY INJUNCTION

In the alternative, plaintiffs have moved for a preliminary injunction against the defendant. Plaintiffs have so moved on the same grounds as their request for summary judgment—preemption. Based on the analysis of the law recited above in denying plaintiffs' motion for summary judgment, the court concludes that plaintiffs have not shown a substantial probability of success at trial and thus plaintiffs' request for a preliminary injunction will also be denied. The foregoing recitation of facts and statement of law shall constitute the court's Findings of Fact and Conclusions of Law in accordance with Fed. R. Civ. P. 52(a).

Upon the foregoing,

IT IS ORDERED That defendant's motion to abstain be, and the same hereby is in all respects denied.

IT IS FURTHER ORDERED That plaintiffs' motion for an order granting summary judgment in favor of plaintiffs, and against defendant, on issues tendered in Count I of plaintiffs' Amended Complaint be, and the same hereby is in all respects denied.

IT IS FURTHER ORDERED That plaintiffs' motion for an order granting a preliminary injunction, upon the grounds set forth in Count I of the Amended Complaint, enjoining the defendant, his agents, representatives and employees, from assessing or certifying a pension funding charge against plaintiffs under the Minnesota Private Pension Act, Minn. Stat. Ch. 181B, and from taking or continuing to take any other action to enforce said statute against plaintiffs, pending a final determination of this cause by this court, be, and the same hereby is in all respects denied.

Dated: March 18, 1976.

DONALD D. ALSOP
United States District Judge

(Caption)

NOTICE OF APPEAL

Notice is hereby given that White Motor Corporation and White Farm Equipment Company, plaintiffs above named, hereby appeal to the United States Court of Appeals for the Eighth Circuit from the Order entered in this action on the 18th day of March, 1976, in which the District Court, *inter*

alia, overruled the plaintiffs' motion for a preliminary injunction.

Dated: March 23, 1976.

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UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 76-1266

WHITE MOTOR CORPORATION and
WHITE FARM EQUIPMENT COMPANY,
Appellants,

vs.

E. I. MALONE, Commissioner of Labor
and Industry for the State of Minnesota,
Appellee.

Appeal from the United States District Court for the District of Minnesota.

Submitted: September 15, 1976
Filed: December 2, 1976

Before BRIGHT and WEBSTER, Circuit Judges, and TALBOT SMITH, Senior District Judge.*

BRIGHT, Circuit Judge.

The question presented by this case is whether federal labor policy preempts the legislative power of the State of Minnesota to impose upon the White Motor Corporation[1] (White Motor) the obligation to fully fund its employee pension plan upon the closing of its factory and terminating its employees, notwithstanding an agreement to the contrary contained in the collective bargaining contract between White Motor and

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* TALBOT SMITH, Senior District Judge, Eastern District of Michigan, sitting by designation.

[1] The district court described the organizational history of appellant White Motor, as follows:

In 1962, White Motor organized a subsidiary, Minneapolis-Mo-

the employees' unions. The district court answered this preemption question in the negative[2] and denied White Motor injunctive relief barring enforcement of the questioned Minnesota legislation, referred to here as the Minnesota Pension Act.[3] We disagree, and hold that the Minnesota Pension Act, as applied to White Motor, is preempted by federal labor policy.

We have earlier considered other problems relating to White Motor's pension plan.[4] The historical facts related there are a prelude to the present litigation. White Motor closed its Minneapolis factory and attempted to terminate as of June 30, 1972, the pension plan benefiting employees at the Minneapolis plant and employees at another White Motor factory in Hopkins, Minnesota. The UAW (Union) challenged the action contending that the pension plan could not be terminated prior to May 1, 1974, the expiration date of the collective bargaining agreement then in effect. An arbitrator ruled in favor of the Union, and the federal district court sustained the award as within the arbitrator's powers granted under terms of the collective bargaining agreement. On appeal, we affirmed. During that prior litigation, White Motor took appropriate action to

line, Inc. Minneapolis-Moline, Inc. on January 1, 1963 acquired the assets of Motec Industries, Inc. (formerly called the Minneapolis-Moline Company) which had operated farm manufacturing plants at Hopkins, Minnesota and Minneapolis, Minnesota, on Lake Street. In 1969 Minneapolis-Moline, Inc. changed its name to White Farm. White Farm still operates the Hopkins plant but closed the Lake Street plant in June, 1972. [*White Motor Corp. v. Malone*, 412 F. Supp. 372, 373 (D. Minn. 1976).]

[2] The district court opinion is supported as *White Motor Corp. v. Malone*, 412 F. Supp. 372 (D. Minn. 1976).

[3] The state statute involved in this litigation is the Private Pension Benefits Protection Act, ch. 437, §§1-18 (1974), Minn. Laws 2d Reg. Sess. 825-31.

[4] *International Union, UAW v. White Motor Corp.*, 505 F.2d 1193 (8th Cir. 1974), *cert. denied*, 421 U.S. 921 (1975).

terminate the pension plan as of May 1, 1974, if the arbitrator's determination should be sustained.[5]

During the pendency of the preceding litigation, the Minnesota legislature enacted the Minnesota Pension Act, effective April 10, 1974.[6] The statute requires full funding of pension benefits whenever an employer ceases to operate a place of employment or pension plan. The district court described and interpreted the relevant statutory provisions as follows:

The title of the Act describes it as

[5] We observe that a later date (June 5, 1975), White Motor, and the Union entered into a new pension plan for the still-operating Hopkins plant.

[6] Relevant statutory provisions read:

181B.03 PENSION REFUNDING CHARGE, VESTED BENEFITS PRIOR TO PENSION BENEFITS PROTECTION ACT. Every employer who hereafter ceases to operate a place of employment or a pension plan within this state shall owe to his employees covered by sections 181B.01 to 181B.17 a pension funding charge which shall be equal to the present value of the total amount of vested pension benefits based upon covered service occurring before April 10, 1974 of such employees of the employer who have completed ten or more years of any covered service under the pension plan of the employer and whose vested pension benefits have been or will be forfeited because of the employer's ceasing to operate a place of employment or a pension plan, less the amount of such vested pension benefits which are compromised or settled to the satisfaction of the commissioner as provided in sections 181B.01 to 181B.17.

181B.04 NONVESTED BENEFITS PRIOR TO ACT. Every employer who hereafter ceases to operate a place of employment or a pension plan within this state shall owe to this employees covered by sections 181B.01 to 181B.17 a pension funding charge which shall be equal to the present value of the total amount of nonvested pension benefits based upon service occurring before April 10, 1974 of such employees of the employer who have completed ten or more years of any covered service under the pension plan of the employer and whose nonvested pension benefits have been or will be forfeited because of the employer's ceasing to operate a place of employment or a pension plan, less the amount of such nonvested pension benefits which are compromised or settled to the satisfaction of the commissioner as provided in sections 181B.01 to 181B.17. [Private Pension Benefits Protection Act, ch. 437, §§3, 4 (1974), Minn. Laws 2d Reg. Sess. 828 (codified as Minn. Stat. §§181B.03, .04).]

"[a]n act relating to private pensions; imposing an obligation upon certain employers who terminate pension plans; providing for the enforcement and method of payment of such obligations." Minn. Laws 1974, ch. 437.

Minn. Stat. §§181B.03-.06 impose a "pension funding charge" directly against any employer who ceases to operate a place of employment or a pension plan. Such charge shall be equal in amount to the vested and nonvested benefits described in the statutory provisions. These sections essentially provide that any employee who has completed ten or more years of credited service under a pension plan has, upon termination of that plan or of his place of employment, an automatically vested right to all pension benefits he would have received had the particular plan not been terminated or had the place of business not been closed.

Minn. Stat. §§181B.09-12 provide that the Commissioner of Labor and Industry, after investigation, shall certify amounts owing by an employer. That certified amount is declared, under §181B.11, to "be a lien upon the employer's assets." The pension funding charge is used to purchase an annuity payable to the employee when he reaches normal retirement age. [*White Motor Corp. v. Malone*, 412 F. Supp. 372, 375 (D. Minn. 1976).]

Pursuant to applicable provisions of the Minnesota Pension Act, the State of Minnesota notified White Motor that the corporation owed a pension funding charge of $19,150,053. White Motor's obligations as to vesting and, particularly, as to funding under the pension plan differed significantly from obligations imposed on employers by the Minnesota Pension Act. The district court described the history of White Motor's plan

and discussed the differences in obligations imposed on the employer by its plan, as compared to the statutory obligations under Minnesota law, as follows:

In 1950, a pension plan was established for the employees of the predecessor of White Farm [White Motor]. This pension plan was carried forward in some form in each of the subsequent years that collective bargaining agreements were entered into: 1954, 1959, 1962, 1965, 1968 and 1971. Since 1955, the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America and certain of its local unions (hereinafter collectively referred to as the "UAW") have been the bargaining representatives for production and maintenance employees and clerical employees at the Lake Street and Hopkins plants. Pension benefits resulting from collective bargaining agreements continued to increase after the purchase of Motec Industries by White Motor in 1963.

The 1971 version of the pension plan is the plan pertinent to this action. The 1971 plan contained a provision, first inserted in the 1968 plan, requiring the funding of unpaid past service liability. Unpaid past service liability is at any given time, the excess of the accrued liability of the pension fund over the present value of the assets of the fund. The 1971 plan provided:

Section 9.05

The unfunded net deficiency as of January 1, 1971 shall be amortized over a thirty-five (35) year period from January 1, 1971. The deficiencies resulting from benefit increases effective January 1, 1972 and January 1, 1973 shall be funded uniformly over a thirty-

five (35) year period from January 1, 1972 and January 1, 1973 respectively.

* * *

In language unchanged since the 1950 pension plan, the 1971 plan provided for the payment of pensions as follows:

Section 6.09—Source of Pensions

Pensions shall be payable only from the Fund and rights to pensions shall be enforceable only against the Fund.

* * *

Section 6.17—No Other Benefits

No benefits other than those specifically provided for are to be provided under this Plan. No employee shall have any vested right under the Plan prior to his retirement and then only to the extent specifically provided herein.

* * *

Section 9.04—Rights of Employees in the Fund

No employees, participant or pensioner shall have any right to, or interest in, any part of any Trust Fund created hereunder, upon termination of employment or otherwise, except as provided under this Plan and only to the extent therein provided. All payments of benefits as provided for in this Plan shall be made only out of the Fund or Funds of the Plan and neither the Company nor any Trustee nor any Pension Committee or Member thereof shall be liable therefor in any manner or to any extent.

During the 1968 and 1971 negotiations with UAW, Pension Guarantees applicable to the Lake Street and Hopkins plants were given by White Motor. These Guarantees provided that, upon termination of the pension plan, benefits were guaranteed by White Motor at a designated benefit level. By giving the Guarantees, White Motor assumed a direct liability of approximately $7,000,000.

* * *

At the time the Lake Street plant was closed the pension fund was only partially funded and there was a net deficiency in the fund of approximately $14,000,000. [*White Motor v. Malone, supra,* 412 F. Supp. at 373-75 (footnote omitted).]

The Minnesota Pension Act obligations conflict with White Motor's pension plan provisions in the following respects: (1) the Act grants employees vested rights to pension benefits which are not available under the pension plan; (2) to the extent of any deficiency in the pension fund, the Act requires satisfaction of pension benefits from the general assets of the employer, while the pension plan provides that benefits shall be paid only out of the pension fund; and (3) the Act does not permit employers to escape liability for funding of pension rights, but the pension plan permits White Motor to terminate the plan at any time, and in so doing end any liability for future payments to the pension fund, save those specifically guaranteed. Thus, essential features of the pension plan, deferred funding of past service liability[7] coupled with limited employer liability and the power to terminate, were negated by the Pension Act.

[7] The district court noted that deferred funding of past service liability is a common feature of pension plans. In essence, past service liability is met during continuing business operations by the employer's continuing contributions to the pension fund. If the plan is terminated, the pension fund becomes fixed and pension obligations remain partially unfunded. The district court also noted that in the 1971 collective bargaining agreement the parties had agreed to amortize the unfunded deficiency over the next 35 years. *White Motor Corp. v. Malone, supra,* 412 F. Supp. at 374.

The district court rejected White Motor's summary judgment motion for a declaration of invalidity of the Pension Act on preemption grounds, and for relief by way of a temporary injunction against its enforcement, reasoning that,

> [t]he employer's duty to bargain in good faith over pensions is not altered by the Pension Act. The Pension Act does not require labor and management to agree to a pension plan or that specific provisions be included in a pension plan.
>
> The NLRA does not regulate the substantive terms of a collective bargaining agreement.* * *
>
> The danger addressed in *Garmon* [359 U.S. 236 (1959)] is not presented by the facts of the present action. The state is not attempting to regulate a subject matter which lies within the exclusive competence of the National Labor Relations Board. The Pension Act does not
>
> > ". . . regulate conduct so plainly within the central aim of federal regulation involv[ing] too great a danger of conflict between power asserted by Congress and requirements imposed by state law. . . ."
>
> [*White Motor Corp. v. Malone, supra,* 412 F. Supp. at 379 (citations omitted).]

Additionally, the district court determined the preemption doctrine was inapplicable to pension plans, on the ground that Congress in the Welfare and Pension Plans Disclosure Act, Pub. L. No. 85-836, 72 Stat. 997 (1958) (codified at 29 U.S.C. §301 *et seq.*), as amended, explicitly recognized state power over pension plan "operation" or "administration." In that regard the district court wrote:

> Congress expressly provided that states should remain

> free to become involved in the regulation of pension plans when it stated:
>
> > The provisions of this chapter . . . shall not be held to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law . . . of any State affecting the operation or administration of employee . . . pension benefit plans. . . .
>
> 29 U.S.C. §309(b).
>
> The legislative history of the Pension Disclosure Act further emphasizes the regulatory power retained by the states. The Senate Report stated:
>
> > . . . [The Pension Disclosure Act] is a disclosure statute and by design endeavors *to leave regulatory responsibility to the States.*
> >
> > * * * * *
> >
> > . . . It is designed to place the primary responsibility for the policing and improved operations of these plans upon the participants themselves, with a minimum of interference in the natural development and operation of such plans, *to leave to the States the detailed regulations relating to insurance, trusts, and other phases of their operations,* and to place the least possible burden by way of costs and otherwise upon the plans and upon the Federal Government. [emphasis added]
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> S. Rep. No. 1440, 85th Cong. 2d Sess. (1958), 1958 *U.S. Code Cong. and Adm. News* 4137, 4153-4154.
>
> Moreover, Congress was specifically aware that pension plans were often the product of the collective bargaining process. *See, e.g.,* S. Rep. No. 1440, 85th Cong., 2d Sess. (1958), 1958 *U.S. Code Cong. and Adm. News*

> 4181, 4188-4189. Thus Congress was not unmindful that it was permitting States to regulate a subject matter which was the product of collective bargaining. [*White Motor Corp. v. Malone, supra,* 412 F.Supp. at 380-81.]

We disagree.

The Minnesota Pension Act directly intrudes upon the employer's substantive obligations under the pension plan, obligations arrived at freely through collective bargaining, and appears in its operation to be a unique legislative act. The Supreme Court's holdings and decisions in the area of federal labor law preemption require reversal.

Section 7 of the National Labor Relations Act (29 U.S.C. §157) establishes the right of employees to form and join labor organizations and to bargain collectively through representatives of their own choosing. Sections 8(a) (5), 8(b) (3), and 8(d) of the National Labor Relations Act, as amended (29 U.S.C. §§158(a) (5), 158(b) (3), and 158 (d)), require employers and labor organizations to bargain in good faith with respect to "wages, hours, and other terms and conditions of employment * * *." Pension plans fall within the category of "wages and other terms and conditions of employment," and are therefore mandatory subjects of bargaining under the National Labor Relations Act. *Inland Steel Co. v. NLRB*, 170 F.2d 247 (7th Cir. 1948), *cert. denied,* 336 U.S. 960 (1949).

Congress, in enacting the NLRA, refrained from specifying those aspects of labor relations which are not subject to state interference. Thus, a considerable body of law has developed in which the courts have determined when state action affecting collective bargaining is impermissible. The United States Supreme Court recently reviewed and discussed these cases in *Lodge 76, Machinists v. Wisconsin Employment Relations Commission,* —— U.S. ——, 96 S.Ct. 2548 (1976).

Mr. Justice Brennan, speaking for the majority of the Court, noted the general division of cases into two categories:

> Cases that have held state authority to be preempted by federal law tend to fall into one or two categories: (1) those that reflect the concern that "one forum would enjoin, as illegal, conduct which the other forum would find legal" and (2) those that reflect the concern "that the [application of state law by] state courts would restrict the exercise of rights guaranteed by the Federal Acts." [*Machinists, supra,* —— U.S. at ——, 96 S.Ct. at 2552 (citation omitted).]

The decision in *Machinists* focused on the second category. The Wisconsin Employment Relations Commission had ordered a union to cease and desist from "authorizing, encouraging or condoning any considered refusal to accept overtime assignments" from the employer after the termination of the previous collective bargaining agreement, and during negotiations for a new agreement, and the Wisconsin courts had entered a judgment enforcing the Commission's order.[9] The *Machinists* appeal to the Supreme Court presented the question whether federal labor policy preempted the authority of the state Labor Relations Board to enjoin a union and its members from refusing to work overtime in order to put economic pressure on the employer in negotiations for renewal of an expired collective bargaining agreement. The Court deemed this controversy as falling into the second line of preemption cases, *i.e.*, those "focusing upon the crucial inquiry whether Congress intended that the conduct involved be unregulated because 'left to be controlled by the free play of eco-

[9] *Lodge 76, Machinists v. Wisconsin Employment Relations Commission,* 67 Wis. 2d 13, 226 N.W.2d 203 (1975).

nomic forces.' " *Machinists, supra,* —— U.S. at ——, 96 S.Ct. at 2553.

The Wisconsin Supreme Court in upholding the injunction had relied on the so-called *Briggs-Stratton* case, *Local 232 Automobile Workers v. Wisconsin Board,* 336 U.S. 245 (1949). *Briggs-Stratton* held that state power was not preempted as to peaceful conduct neither protected by §7 nor prohibited by §8 of the Act, a holding premised on the statement that "[t]his conduct is either governable by the state or it is entirely ungoverned." *Machinists, supra,* —— U.S. at ——, 96 S.Ct. at 2553, quoting *Briggs-Stratton, supra,* 336 U.S. at 254. The *Machinist* opinion oberved that the underpinning of *Briggs-Stratton* had been undercut by subsequent decisions of the Court

> [f]or the Court soon recognized that a particular activity might be "protected" by federal law not only where it fell within § 7, but also when it was an activity that Congress intended to be "unrestricted by *any* governmental power to regulate" because it was among the permissible "economic weapons in reserve . . . actual exercise [of which] on occasion by the parties is part and parcel of the system that the Wagner and Taft-Hartley Acts have recognized." NLRB v. Insurance Agents, 361 U.S. at 488, 489, 80 S.Ct. at 426, 427 (emphasis added). [*Machinists, supra,* —— U.S. at ——, 96 S.Ct. at 2553-54.]

The *Machinists* decision expressly overruled the *Briggs-Stratton* decision as having been worn away by contrary authority. *Machinists, supra,* —— U.S. at ——, 96 S.Ct. at 2560.

The *Machinists* case and the cases relied on in *Machinists*[9]

[9] *See* cases cited at *Machinists, supra,* —— U.S. at ——, 96 S.Ct. at 2555.

considered the power of states to regulate conduct by employers and employees constituting economic weapons used in the collective bargaining process. The *Machinists* opinion deemed the Court's earlier decision in *NLRB v. Insurance Agents,* 361 U.S. 477 (1960), as substantial precedent for overruling *Briggs-Stratton.* In *Insurance Agents,* on-the-job activities by union members interfered with the employer's business, and thus put economic pressure on the employer to accede to the union's bargaining demands. The NLRB held that proof of these tactics justified its determination that the union had failed to bargain in good faith as required by §8(b) (3) of the NLRA. The Supreme Court disagreed:

> [A]part from this essential standard of conduct [good faith], Congress intended that the parties should have wide latitude in their negotiations, unrestricted by any governmental power to regulate the substantive solution of their differences.
>
> * * *
>
> [I]f the Board could regulate the choice of economic weapons that may be used as part of collective bargaining, it would be in a position to exercise considerable influence upon the substantive terms on which the parties contract. As the parties' own devices became more limited, *the Government might have to enter even more directly into the negotiation of collective agreements. Our labor policy is not presently erected on a foundation of government control of the results of negotiations.* [*Insurance Agents, supra,* 361 U.S. at 488, 490 (emphasis added).]

Machinists, in its review of pertinent Supreme Court

cases,[10] makes it abundantly clear that neither the states nor the National Labor Relations Board may attempt to influence the substantive terms of collective bargaining agreements by regulating the conduct of the parties to collective bargaining negotiations. These agreements are to be controlled by and left to the free play of economic forces. If states cannot control the economic weapons of the parties at the bargaining table, *a fortiori*, they may not directly control the substantive terms of the contract which results from that bargaining.

Appellant in seeking reversal relies heavily on *Local 24, Teamsters v. Oliver*, 358 U.S. 283 (1959). *Oliver* holds that by reason of the preemption doctrine, a state anti-trust statute cannot apply to negate terms of a collective bargaining agreement setting wage rates. In that case, a collective bargaining agreement between a group of labor unions and a group of interstate motor carriers prescribed a wage scale for truck drivers and, in order to prevent evasion thereof, provided that truck owner-drivers should be paid, in addition to the prescribed wage, not less than a specified minimum rental for the use of their vehicles. Respondent Oliver, a truck owner-driver member of the union had obtained an injunction in the state court, affirmed by the Ohio Supreme Court, to prevent the motor carriers and the local union from carrying out the minimum rent provision on the ground that such term of the collective bargaining agreement violated Ohio antitrust laws. The Supreme Court reversed. The state antitrust law could

[10] *See* cases cited in *Machinists, supra*, —— U.S. at ——, 96 St.Ct. at 2555-59. We, of course, here are not concerned with certain aspects of labor relations which courts have recognized as falling within the police power of the states, such as actual or threatened violence to persons, or destruction of property, or where the activity regulated is of peripheral concern to federal labor relations policy. *See Machinists, supra*, ——U.S. at ——, 96 S.Ct. at 2551, notes 2 and 3.

not be applied to bar the contracting parties from carrying out of the terms of a collective bargaining agreement upon a subject as to which federal law directed them to bargain. The Court said:

> We must decide whether Ohio's antitrust law may be applied to prevent the contracting parties from carrying out their agreement upon a subject matter as to which federal law directs them to bargain. Little extended discussion is necessary to show that Ohio law cannot be so applied. * * * The goal of federal labor policy, as expressed in the Wagner and Taft-Hartley Acts, is the promotion of collective bargaining; to encourage the employer and the representative of the employees to establish, through collective negotiation, their own charter for the ordering of industrial relations, and thereby to minimize industrial strife. See *Labor Board v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 45; *Labor Board v. American National Ins. Co.*, 343 U.S. 395, 401-402. Within the area in which collective bargaining was required, Congress was not concerned with the substantive terms upon which the parties agreed. * * * [*Oliver, supra*, 358 U.S. at 295.]

Specifically focusing on the threatened impact of the state law on the collective bargaining process, the court said:

> To allow the application of the Ohio antitrust law here would wholly defeat the full realization of the congressional purpose. The application would frustrate the parties' solution of a problem which Congress has required them to negotiate in good faith toward solving, and in the solution of which it imposed no limitations relevant here. Federal law here created the duty upon the parties to bargain collectively; Congress has provided for a sys-

tem of federal law applicable to the agreement the parties made in response to that duty * * *; and federal law sets some outside limits (not contended to be exceeded here) on what their agreement may provide * * *. We believe that there is no room in this scheme for the application here of this state policy limiting the solutions that the parties' agreement can provide to the problems of wages and working conditions. * * * Since the federal law operates here, in an area where its authority is paramount, to leave the parties free, the inconsistent application of state law is necessarily outside the power of the State. * * * The solution worked out by the parties was not one of a sort which Congress has indicated may be left to prohibition by the several States. * * * We have not here a case of a collective bargaining agreement in conflict with a local health or safety regulation; the conflict here is between the federally sanctioned agreement and state policy which seeks specifically to adjust relationships in the world of commerce. If there is to be this sort of limitation on the arrangements that unions and employers may make with regard to these subjects, pursuant to the collective bargaining provisions of the Wagner and Taft-Hartley Acts, it is for Congress, not the States, to provide it. [*Oliver, supra*, 358 U.S. at 295-97 (citations omitted).]

The district court rejected *Oliver* as dispositive in this case, stating:

Plaintiffs assert that a state's attempt to regulate a subject matter of collective bargaining, such as employee pensions, should not be permitted where that regulation conflicts with the collective bargaining agreement.

* * *

State antitrust statutes present unique problems in the area of labor preemption. The Supreme Court has consistently held that the NLRA precludes their application to appropriate labor union activities. *See, e.g., Connell Construction Co. v. Plumbers & Steamfitters*, 421 U.S. 616 * * * (1975); *Weber v. Anheuser-Busch, Inc.*, 348 U.S. 468 * * * (1955). Antitrust laws are designed primarily to apply to business combinations and their application to collective action by employees would produce a direct conflict with the national labor policy.
The Court has stated that:

[p]ermitting state antitrust law to operate in [the labor] field could frustrate the basic federal policies favoring employee organization and allowing elimination of competition among wage earners, and interfere with the detailed system Congress has created for regulating organizational techniques.

Connell, supra, 421 U.S. at 636, 95 S.Ct. at 1842, 44 L.Ed.2d at 434.

The inherent conflict and delicate balance which exists between labor and antitrust policy does not exist between labor policy and the regulation of pensions. Congress, in formulating its policies, has indicated that states may regulate pensions. Accordingly, the court concludes that the Minnesota Pension Act does not necessarily stand as an obstacle to the accomplishment of the purposes and objectives of Congress. The broad language of *Oliver* does not require the striking down of the Pension Act. [*White Motor Corp. v. Malone, supra*, 412 F. Supp. at 381.]

In our view, *Oliver* is not to be read so restrictively. We emphasize the Court's language:

We believe there is no room in this scheme [of federal labor law] for the application here of the state policy limiting the solutions that parties' agreement can provide to the problems of wages and working conditions. [*Oliver, supra*, 358 U.S. at 296.]

Moreover, in *Labor Board v. Insurance Agents*, the Court cited *Oliver* in support of the following statement:

But apart from this essential standard of conduct Congress intended that the parties should have wide latitude in their negotiations unrestricted by any governmental power to regulate the substantive solution of their differences. See *Teamsters Union v. Oliver, supra*, at 295. [*Insurance Agents, supra*, 361 U.S. at 488.]

The Supreme Court in *Machinists* also relied on specific language in *Oliver* as a basis for overruling *Briggs-Stratton*.

Our decisions since *Briggs-Stratton* have made it abundantly clear that state attempts to influence the substantive terms of collective-bargaining agreements are as inconsistent with the federal regulatory scheme as are such attempts by the NLRB: "[s]ince the federal law operates here, in an area where its authority is paramount, to leave the parties free, the inconsistent application of state law is necessarily outside the power of the State." *Local 24 of International Brotherhood of Team sters, Chauffeurs, Warehousemen and Helpers of America, A.F.L.-C.I.O. v Oliver*, 358 US. 283, 296 * * * (1959). [*Machinists, supra*,—U.S. at—, 96 S.Ct. at 2559.]

Thus, *Oliver* stand for the general proposition that a state cannot modify or change an otherwise valid and effective provision of a collective bargaining agreement.

Finally, we turn to the district court determination that the federal Welfare and Pensions Plans Disclosure Act, Pub. L.

No. 85-836, 72 Stat. 997 (1958) (codified at 29 U.S.C. §301 *et seq.*) (Disclosure Act), expressly authorizes substantive state regulation of pension plans. The statutory language relied on by the district court is as follows:

The provisions of this chapter * * * shall not be held to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of the United States or of any State affecting the operation or administration of employee, welfare, or pension benefit plans, or in any manner to authorize the operation or administration of such plan contrary to any such law. [29 U.S.C. §309(b).][11]

Neither this language nor statutory history suggests that Congress intended to regulate substantive provisions, performance of, or the funding of any employee benefit plan or to authorize such regulation by the states.

The express statutory language relied upon by the district court applies to duties and liabilities, civil or criminal, imposed upon persons operating and administering employee welfare or pension benefit plans to conserve and keep safe those funds. The legislative history emphasizes the limited purpose of this legislation and that the Act's provisions to not affect substan-

[11] The Welfare & Pension Plans Disclosure Act has been superseded by the Employee Retirement Income Security Act (ERISA), a comprehensive pension reform law enacted on September 2, 1974. The ERISA specifically repealed the Pension Disclosure Act, 29 U.S.C. §1031, and repiaced it with new reporting and disclosure provisions. 29 U.S.C. §§1021-1031. The district court noted:

ERISA also sought to avoid all future questions of preemption by specifically providing for the superseding of all state laws relating to employee benefit plans. 29 U.S.C. §1144. Since ERISA with its preemption provision was enacted after the occurrences which give rise to the present case before the court, plaintiffs have not sought to avail themselves of any of its provisions of legislative history. [*White Motor Corp. v. Malone, supra*, 412 F. Supp. at 380 n. 6.]

tive terms of employee benefit plans. We turn to the Senate Report as the Senate Bill was passed in lieu of the House Bill. *See* 3 U.S. Code Cong. & Adm. News 4137 (1958). That Senate Report, in part, reads:

> Complete disclosure of the details of welfare and pension plan operations provides the most effective single deterrent against abuses and the many other weaknesses of these plans. It would provide the greatest incentive to good management and investment policies and the best protection to the interests and rights of employees, employers, and the Government alike [*Id.* at 4153.]

In further discussion of the principles and purposes of the Senate Bill, the Report adds:

> S. 2888 provides for registration, reporting, and disclosure of the financial operations of all types of private employee welfare and pension benefit plans. It is designed to place the primary responsibility for the policing and improved operations of these plans upon the participants themselves, with a minimum of interference in the natural development and operation of such plans, to leave to the States the detailed regulations relating to insurance, trusts, and other phases of their operations, and to place the least possible burden by way of cost and otherwise upon the plans and upon the Federal Government. It is the policy of this bill to protect the revenues of the United States, the interests of participants in the plans, their beneficiaries, the employers and the public, and to conserve the moneys involved so as to assure their utilization for their intended purposes.
>
> The bill would give the employee-beneficiaries of these plans an accounting for the money they spend and which is spent in their behalf for future security benefits and

> permits them to appraise the merits of these plans, which in many cases are held out to them as a competitive inducement of employment. It would give the employee-beneficiaries protections comparable to those provided in other large-scale investment operations. It is designed to deter dishonesty, mismanagement, and waste by allowing public scrutiny of the financial operations of such plans, and it accomplishes disclosure of the finances of these plans in one operation for all purposes. [*Id.* at 4154-55.]

Additionally, the report discusses criminal penalties and, in that discussion, expressly negates any purpose of the enactment to regulate substantive provisions:

> Although making no attempt to regulate employee-benefit plans, the bill, in addition to the necessary authority to the Secretary of Labor to enforce the administration of the legislation, provides severe criminal sanctions for willful, false statements, the destruction of records, embezzlement, kick-backs, and other self-dealing. [*Id.* at 4157.]

Clearly, the preemption disclaimer provision of the Disclosure Act, §309(b), relates to state statutes governing those obligations of trust undertaken by persons managing, administrating, or operating employee benefit funds, the violation of which gives rise to civil and criminal penalties. Accordingly, no warrant exists for construing this legislation to leave to a state the power to change substantive terms of pension plan agreements.

The construction to the contrary pressed upon us by the appellee would turn upside down well-established labor law principles.

> An appreciation of the true character of national labor policy expressed in the NLRA and LMRA indicates that

> in providing a legal framework for union organization, collective bargaining, and the conduct of labor disputes, Congress struck a balance of protection, prohibition, and laissez faire in respect to union organization, collective bargaining, and labor disputes that would be upset if a state could also enforce statutes or rules of decision resting upon its views concerning accommodation of the same interests. [Cox, *Labor Law Preemption Revisited,* 85 Harv.L.Rev. 1337, 1352 (1972).]

The economic travail suffered by retirees of the former Minnesota Moline Company plant in Minneapolis, Minnesota, did not result from misapplication, misappropriation, or misuse of any pension trust funds. The employees' expectation of pension benefits remained subject to change by reason of changing economic conditions, because the employer reserved the right to terminate the plan. Blame cannot be attached to either the Union or the employer for the changed economic conditions which resulted in the closing of the Lake Street plant and the termination of the pension plan. The parties (union and employer) agreed upon a pension plan that was never fully funded, or otherwise guaranteed. We presume that the parties agreed to increase current wages, perhaps at the expense of adequately funding retirement benefits.

If the legislative solution presented here can be sustained, then in another day a differently-minded state legislature could take away from working people contract benefits obtained through hard, fair bargaining. We construe national labor policy to mandate "hands off" by the states in this area of labor relations.

We reverse and remand for the entry of judgment in conformity with this opinion.

A true copy.

Attest: Clerk, U.S. Court of Appeals, Eighth Circuit.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 76-1266

WHITE MOTOR CORPORATION and
WHITE FARM EQUIPMENT COMPANY,
Appellees,

vs.

E. I. MALONE, Commissioner of Labor and
Industry for the State of Minnesota,
Appellants.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that E. I. Malone and the State of Minnesota, the above-named appellants, hereby appeal to the Supreme Court of the United States from the final judgment of the United States Court of Appeals for the Eighth Circuit filed and entered on December 2, 1976, reversing the judgment of the United States District Court for the District of Minnesota dated March 18, 1976.

This appeal is taken pursuant to 28 U.S.C. § 1254(2).

Dated: December 7th, 1976.

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MINNESOTA PRIVATE PENSION BENEFITS PROTECTION ACT

Minn. Stat. § 181B.01 et seq. (1976)

CHAPTER 181B

PRIVATE PENSION BENEFITS PROTECTION

181B.01 CITATION. Sections 181B.01 to 181B.17 shall be known and may be cited as the "private pension benefits protection act".

[1974 c 437 s 1]

181B.02 DEFINITIONS. Subdivision 1. As used in sections 181B.01 to 181B.17, the following terms shall have the meanings given.

Subd. 2. "Employer" means any person, firm or corporation who employs 100 or more people at least one of whom is employed in this state at any time within one year prior to the date that it ceases to operate a place of employment or a pension plan or such longer period as may be prescribed by the commissioner pursuant to section 181B.14.

Subd. 3. "Place of employment" means any location within this state at which an employer employs any employees at any time within one year prior to the date that the employer ceases to operate at such location or such longer period as may be prescribed by the commissioner pursuant to section 181B.14.

Subd. 4. "Employee" means any person employed at the place of employment at any time within one year prior to the date when the employer ceases to operate the place of employment or a pension plan or such longer period as may be prescribed by the commissioner pursuant to section 181B.14. "Employee" also means any person who is not employed by the employer but who was formerly employed in this state, and is eligible or will be eligible without the earning of additional pension credits to receive a pension benefit from the employer's pension plan.

Subd. 5. "Commissioner" means the commissioner of labor and industry.

Subd. 6. "Ceases to operate a place of employment or a pension plan" means:

(a) The complete termination of operations at a place of employment, or

(b) A substantial reduction in the number of employees at a place of employment, or

(c) The termination or substantial reduction of pension plan operations or benefits for all or a portion of an employer's employees.

The term shall not mean any temporary cessation of operations or reduction of employees. Neither shall the term mean any cessation of operations by a single employer who participates in a pension plan to which more than one employer makes contributions if such cessation does not also entail the termination of the master pension plan. In determining whether any reduction has been substantial the commissioner shall take into consideration not only the absolute size of the reduction but the relative size of the reduction as it relates to the corporate and employment history of the group or subgroup suffering the reduction. In addition, the commissioner may find that a number of unsubstantial reductions are, for the purposes of sections 181B.01 to 181B.17, equivalent to a substantial reduction. When an employer ceases to operate a place of employment or a pension plan but offers to retain without loss of pension credit all of the employees in comparable jobs with equal or increased compensation at another location within the state or at some other location outside this state as specified in any voluntary agreement authorized by section 181B.10, sections 181B.01 to 181B.17 shall not apply except as it affects persons not employed by the employer but who are eligible or will be eligible without the earning of additional pension credits to receive the pension benefits from the employer's pension plan.

Subd. 7. "Pension plan" means any plan, fund or program which is established, maintained or entered into by an employer for the purpose of providing retirement benefits for its employees, or their beneficiaries and which is designated as a qualified pension plan under section 401 of the United States Internal Revenue Code of 1954 as amended, but does not mean any plan established by collective bargaining agreement which is excluded from the coverage of 29 U.S.C. 186(c)

(5) (B) by 29 U.S.C. 186(g) and for which the employer has no administrative responsibility and no responsibility for the establishment of the retirement benefit schedule. Sections 181B.01 to 181B.17 shall not apply to any retirement fund or program providing benefits only for public employees of the federal government or the state government or a subdivision of the state, nor shall it apply to any pension plan established on behalf of a religious, charitable, or educational organization as defined by Section 501(c) (3) of the United States Internal Revenue Code of 1954 as amended. Further, sections 181B.01 to 181B.17 shall not apply to any money purchase, profit sharing, or stock bonus plan in which no definitely determinable level of benefits is stipulated to be given to qualified plan participants at normal retirement age or some other age.

Subd. 8. "Normal retirement benefit" means that benefit payable under a pension plan in the event of retirement at the normal retirement age.

Subd. 9. "Normal retirement age" means the lesser of either the normal retirement age as prescribed by the pension plan or age 65.

Subd. 10. "Accrued portion of the normal retirement benefit" with respect to employees of ten or more years of covered service means the larger of either the present value of the pension benefit which the employee has earned prior to cessation under the terms of the pension plan itself or the present value of the normal retirement benefit to which the employee would be entitled under the plan as in effect on the date of the cessation if he continued to earn pension credits based on the covered service he would have accumulated had he continued as a plan participant until normal retirement age or if he continued to earn annually until normal retirement age the same

rate of compensation as that which he had been earning prior to cessation, upon which his pension credit would have been computed under the plan at the rate specified by the plan for the years subsequent to the cessation, multiplied by a fraction not to exceed one, the numerator of which is the total number of his years of covered service as of the date of cessation, and the denominator of which is the total number of years he would have had in covered service in such plan as of normal retirement age if he had continued to be an active participant in the plan until attaining such age.

With respect to employees with less than ten years of covered service, the defining term means the present value of the total amount of pension benefits which have been vested on or prior to the date of cessation. Where the above formulas are inapplicable or inequitable the defined term means that portion of the normal retirement benefit to which the commissioner determines actuarially the employee should be entitled based on the covered service of the employee, as of the date of the cessation.

Subd. 11. "Covered service" means the longer of either:

(a) The period of employment with an employer including predecessor employers as allowed in section 181B.07, clause (1) which is recognized under the terms of the employer's pension plan for the purposes of determining either an employee's eligibility to receive benefits under the plan or the amount of such benefits, or

(b) The amount of time after institution of the present pension plan or any substantially similar predecessor plan that an employee has been continuously employed in a full time capacity by an employer including predecessor employers as allowed in section 181B.07, clause (1) prior to the cessation of operations. Temporary and seasonal layoffs and unpaid

vacations and leaves of absence need not be credited as covered service but neither shall they serve to interrupt an employee's continuity of service. Part time employment may be credited as covered service if the commissioner determines that a previous full time employee has been reduced to part time status as part of a plan to evade provisions of sections 181B.01 to 181B.17.

Subd. 12. "Vested right" means a legal right obtained by an employee participating in a pension plan to that part of an immediate or deferred pension benefit which arises from the employee's covered service under the plan and is no longer contingent on the employee remaining covered under the plan.

Subd. 13. "Vested pension benefit" means that accrued portion of the normal retirement benefit of an employee participating, or who has participated, in a pension plan to which the employee has a vested right.

Subd. 14. "Nonvested pension benefit" means the accrued portion of the normal retirement benefit of an employee participating in a pension plan to which the employee does not have a vested right.

Subd. 15. "Present value of the total amount of nonvested pension benefits" means that sum of money which if earning interest in a secure investment from the date of the cessation of operations onward would equal the value of the nonvested pension benefit on the date on which the plan participant reached normal retirement age.

Subd. 16. "Present value of the total amount of vested pension benefits" means that sum of money which if earning interest in a secure investment from the date of cessation of operations onward would equal the value of the vested pension benefit on the date on which the plan participant reached normal retirement age minus that sum of money which is set aside

in trust or exclusively reserved to finance pension benefits for plan participants.

Subd. 17. "Present value of the normal retirement benefit" means that sum of money which if earning interest in a secure investment from the date of the cessation of operations onward would equal the value of the normal retirement benefit on the date on which the plan participant reached normal retirement age.

[1974 c 437 s 2]

181B.03 PENSION REFUNDING CHARGE, VESTED BENEFITS PRIOR TO PENSION BENEFITS PROTECTION ACT. Every employer who hereafter ceases to operate a place of employment or a pension plan within this state shall owe to his employees covered by sections 181B.01 to 181B.17 a pension funding charge which shall be equal to the present value of the total amount of vested pension benefits based upon covered service occurring before April 10, 1974 of such employees of the employer who have completed ten or more years of any covered service under the pension plan of the employer and whose vested pension benefits have been or will be forfeited because of the employer's ceasing to operate a place of employment or a pension plan, less the amount of such vested pension benefits which are compromised or settled to the satisfaction of the commissioner as provided in sections 181B.01 to 181B.17.

[1974 c 437 s 3]

181B.04 NONVESTED BENEFITS PRIOR TO ACT. Every employer who hereafter ceases to operate a place of employment or a pension plan within this state shall owe to his employees covered by sections 181B.01 to 181B.17 a pension funding charge which shall be equal to the present value of the total amount of nonvested pension benefits based upon service occurring before April 10, 1974 of such employees of the employer who have completed ten or more years of any covered service under the pension plan of the employer and whose nonvested pension benefits have been or will be forfeited because of the employer's ceasing to operate a place of employment or a pension plan, less the amount of such nonvested pension benefits which are compromised or settled to the satisfaction of the commissioner as provided in sections 181B.01 to 181B.17.

[1974 c 437 s 4]

181B.05 VESTED BENEFITS UNDER ACT. Every employer who hereafter ceases to operate a place of employment or a pension plan within this state shall owe to his employees covered by sections 181B.01 to 181B.17 a pension funding charge which shall be equal to the present value of the total amount of vested pension benefits based upon covered service occurring after April 10, 1974 of such employees of the employer who have completed ten or more years of any covered service under the pension plan of the employer and whose vested pension benefits have been or will be forfeited because of the employer's ceasing to operate a place of employment or a pension plan, less the amount of such vested pension benefits which are compromised or settled to the satisfaction of the commissioner as provided in sections 181B.01 to 181B.17.

[1974 c 437 s 5]

181B.06 NONVESTED BENEFITS UNDER ACT. Every employer who hereafter ceases to operate a place of employment or a pension plan within this state shall owe to his employees covered by sections 181B.01 to 181B.17 a pension funding charge which shall be equal to the present value of the total amount of nonvested pension benefits based upon covered service occurring after April 10, 1974, of such employees

of the employer who have completed ten or more years of any covered service under the pension plan of the employer and whose nonvested pension benefits have been or will be forfeited because of the employer's ceasing to operate a place of employment or a pension plan, less the amount of such nonvested pension benefits which are compromised or settled to the satisfaction of the commissioner as provided in sections 181B.01 to 181B.17.

[1974 c 437 s 6]

181B.07 EXCEPTIONS TO PENSION FUNDING REQUIREMENTS. An employer shall not be liable for any pension funding charge under sections 181B.03 to 181B.06 when (1) the employer ceases to operate a place of employment or a pension plan as a result of merger, consolidation, or acquisition of assets, if the successor to the employer continues the pension plan of the employer or establishes a comparable pension plan which covers all previously covered employees of the employer with no reduction in credited covered service for purposes of sections 181B.01 to 181B.17 and no reduction in the value of the pension credits already earned by the employees; or (2) the employer ceasing to operate a place of employment or a pension plan has (a) in each of the five years prior to cessation made a contribution to the pension plan at least equal to the maximum contribution which would have been exempt from income taxation under Section 404 of the United States Internal Revenue Code of 1954 as amended, or (b) in at least eight of the ten years immediately prior to cessation made a contribution to the pension plan at least equal to the maximum contribution which would have been exempt from income taxation under Section 404 of the United States Internal Revenue Code of 1954 as amended, or (c) when the pension plan has been instituted less than five years prior to

cessation, in every year since the institution of the plan, made a contribution to the pension plan at least equal to the maximum contribution which would have been exempt from income taxation under Section 404 of the United States Internal Revenue Code of 1954 as amended.

[1974 c 437 s 7]

181B.08 NOTICE OF INTENTION TO CEASE OPERATIONS. Any employer who intends to cease to operate a place of employment or a pension plan within this state shall notify the commissioner of such intention not later than six months prior to the date the employer intends to cease such operation. In the case of an employer who intends to cease to operate a place of employment or a pension plan within this state within six months of April 10, 1974, the notice required by this section shall be given by the employer as soon as practicable, but not later than ten days after April 10, 1974.

[1974 c 437 s 8]

181B.09 INVESTIGATION BY COMMISSIONER. Upon receipt of such notification, or upon his own initiative when such notification is not given as required, the commissioner shall cause an investigation to be made of the employer to determine the number of employees who have completed ten or more years of covered service under the pension plan of the employer and whose nonvested or vested pension benefits have been or will be forfeited by such cessation, the number of employees whose vested pension benefits have been or will be forfeited by such cessation, the amounts of such nonvested or vested pension benefits, if any, of such employees, and any other facts or circumstances concerning the employer, his employees and the pension plan for such employees as may be necessary or useful to the commissioner to carry out his duties and responsibilities under sections 181B.01 to 181B.17. The

investigation, insofar as practicable, shall be conducted at the employer's place of business during normal business hours. The employer shall cooperate fully with the commissioner in such investigation, and shall make available to him any books, records or other information necessary or useful to such investigation. To aid in such investigations, the commissioner is authorized to administer oaths and affirmations and to issue subpoenas to compel the attendance of witnesses or the production of books, records or other documents. The commissioner may seek, through the attorney general acting on his behalf, orders from any court of competent jurisdiction to compel an employer to comply with the provisions of sections 181B.01 to 181B.17 and to punish disobedience of any subpoena issued pursuant to sections 181B.01 to 181B.17.

[1974 c 437 s 9]

181B.10 DETERMINATION OF AMOUNT OF BENEFITS; AGREEMENTS AS TO BENEFITS. As part of the investigation of an employer, the commissioner shall determine the amount of nonvested and vested pension benefits which have been compromised or settled to his satisfaction. Nonvested and vested pension benefits may be compromised or settled by voluntary agreement between the employer and individual employees which is mutually understood by both parties to be a complete and final satisfaction of the employer's obligations regarding such benefits, provided that both parties are made fully aware of their rights and obligations under sections 181B.01 to 181B.17 prior to the making of such voluntary agreement. Before any such settlement can be made it must be approved by the commissioner. The commissioner shall not approve any settlement that is not fair and equitable. Further, for all settlements entered into by the employer the relationship between the present value of the compromised pension credits and the value of the settlement must be as constant as is practicable.

[1974 c 437 s 10]

181B.11 CERTIFICATION OF AMOUNTS AVAILABLE. After the investigation of the employer the commissioner shall certify to the employer the present value of the total amount of nonvested and vested pension benefits which are includable in determining an employer's pension funding charge liability under sections 181B.01 and 181B.17 and the amount of such benefits which have been compromised or settled to the satisfaction of the commissioner. When the assets of an employer available for distribution under sections 181B.01 to 181B.17 are less than the sum total of the pension funding charges owed to employees as calculated by the commissioner, the commissioner shall calculate the proportion of available assets owed to each employee so that the actual amount to be received by any covered employee at normal retirement age divided by the amount that employee would have received at normal retirement age had there been no shortage of assets available for distribution under sections 181B.01 to 181B.17 is a ratio as constant as is possible from employee to employee. In seeking to keep such ratio constant the commissioner shall consider the amounts to be received by an employee from trust fund assets set aside for employee pension benefits but unavailable for distribution under sections 181B.-01 to 181B.17. The amount certified by the commissioner shall be due and payable to the employees in the manner specified in section 181B.12 on the date that the employer ceases to operate its place of employment or a pension plan and shall be a lien upon the employer's assets. If the pension funding charge is not paid when due the employer shall be liable for interest on the amount due at the rate of eight percent per annum until

the charge and interest are paid, and the attorney general of this state shall bring action in an appropriate district court of this state or in the courts of another state or in an appropriate federal court as provided for in section 181B.13.

[1974 c 437 s 11]

181B.12 PURCHASE OF PREPAID DEFERRED ANNUITY. The amount certified by the commissioner as due and payable to the employees shall be paid to the employees by the employer through the purchase of a prepaid deferred annuity payable to the employee when he reaches normal retirement age or to his beneficiary upon the employee's death. Such purchase shall be made through a trust authorized by the United States Internal Revenue Service to make such purchases in a manner which exempts from federal income taxation the money used to purchase the annuity and all income earned by such annuity up to the date of the distribution of the annuity amount. In no event shall the amount of annuity to be distributed at normal retirement age exceed the amount of the accrued normal retirement benefit.

[1974 c 437 s 12]

181B.13 RECOVERY OF AMOUNTS DUE. The commissioner shall maintain a separate record of each employee owed a pension funding charge under sections 181B.01 to 181B.17. Ten days after any pension funding charge is due the commissioner shall tabulate all unpaid amounts and certify that figure to the attorney general who shall immediately take appropriate legal action as authorized in section 181B.11 on behalf of all aggrieved employees in a class action suit.

[1974 c 437 s 13]

181B.14 ACTS CONSTITUTING TERMINATION. For the purposes of sections 181B.01 to 181B.17, the employment of any employee involuntarily terminated within one year of the date an employer ceases to operate a place of employment or a pension plan within this state, or within such longer period as prescribed by the commissioner when he determines that an employer is attempting to evade the provisions of sections 181B.01 to 181B.17, shall be deemed to have been terminated because of the employer's ceasing to operate its place of employment or a pension plan, unless the employer can conclusively show that the termination was attributable to some other cause.

[1974 c 437 s 14]

181B.15 RULES AND REGULATIONS. The commissioner may promulgate rules and regulations to provide for the efficient administration of the provisions of sections 181B.01 to 181B.17, or to clarify such provisions as may be necessary to effectuate the purposes of sections 181B.01 to 181B.17, and may from time to time specify any appropriate actuarial assumptions necessary to effectuate the purposes of sections 181B.01 to 181B.17.

[1974 c 437 s 15]

181B.16 PROTECTION OF FUNDS FROM EXECUTION OR PROCESS. The funds of any employer which are set aside or reserved for benefits under a pension plan of the employer to which employees have a vested right shall not be liable to levy or attachment by virtue of any execution or civil process whatever, issued out of any court of this state, for the collection of the pension funding charge imposed by sections 181B.01 to 181B.17.

[1974 c 437 s 16]

181B.17 EFFECTIVE DATE; EFFECT OF FEDERAL ACT IN AREA. Sections 181B.01 to 181B.17 shall take effect the day following final passage. Provided that sections 181B.01 to 181B.17 shall become null and void upon the institu-

tion of a mandatory plan of termination insurance guaranteeing the payment of a substantial portion of an employee's vested pension benefits pursuant to any law of the United States.

[1974 c. 437 s 17]

Excerpts from Exhibits Attached to and Incorporated in Affidavit of H. Herbert Phillips.

A. Excerpts from Exhibit 2 to Affidavit of H. Herbert Phillips, consisting of Cover Page and page 123, which contains "Exhibit C," of the 1971-74 Collective Bargaining Agreement.

1971-1974

AGREEMENT

between

MINNEAPOLIS MOLINE

and the

INTERNATIONAL UNION UAW

and it's affiliated Local Unions 107-932

PRODUCTION & MAINTENANCE

EXHIBIT "C"—PENSIONS

The parties hereby have agreed to a Pension Agreement and Plan, printed under separate cover, which is made a part of this Agreement the same as if set forth at length herein. 20.0

EXHIBIT "D"—SUPPLEMENTAL UNEMPLOYMENT BENEFITS

The parties hereto have agreed to a Supplemental Unemployment Benefit Agreement and Plan, printed under separate cover, which is made a part of this Agreement the same as if set forth at length herein. 21.0

EXHIBIT "E"—MINNEAPOLIS-MOLINE PLANT SAFETY PROGRAM

The following is the safety program for the manufacturing

operations of Minneapolis-Moline, set up on the basis of management and labor cooperation in its function. 22.0

The program is to provide a separate plant safety program at Hopkins and Lake Street.

1. Union Safety inspectors will be designated in each of the areas listed below:

a. Lake Street Plant

Local No. 932	Total
Fabrication—	
AD—AG	1
AV	1
AH	1
AC	1
WZ—Heat Treat	1
KA—KG	1
KB	1

B. Excerpts from Exhibit 3 to Affidavit of H. Herbert Phillips consisting of Articles I, VI, IX and X of the 1971 Pension Agreement and Plan.

MINNEAPOLIS-MOLINE PENSION PLAN

ARTICLE I

Name of Plan

Section 1.01—Name of Plan.

The name of the retirement plan herein set forth is "Minneapolis-Moline Pension Plan." It is sometimes hereinafter for brevity referred to as the "Plan."

. . .

ARTICLE VI

Pension Benefits

Section 6.01—On Retirement at or after Normal Retirement Date.

Termination of the employment of a participant for any

cause at or after his Normal Retirement Date shall be deemed to be a retirement, and upon such a retirement of a participant who has completed ten or more years of Credited Service he shall be entitled to a pension payable monthly for life in an amount computed in accordance with the following Benefit Class Table, multiplied by his years of credited service, less his deductions. The first of such payments shall be made on the first day of the month following the month in which his retirement occurs and the last on the first day of the month in which his death occurs.

BENEFIT CLASS TABLE

Non-incentive Classified Hourly Rate	*Incentive Classified Hourly Rate*	*Office Unit Classified Hourly Rate*	*Benefit Rates - Benefits Commencing Prior to 1/1/72*	*1/1/72 to 12/31/72*	*1/1/73 or later*
\$3.75 and less	\$ None	\$3.45 and less	\$5.50	\$6.50	\$7.25
\$3.76 - \$4.31	\$3.32 and less	\$3.46 - \$4.21	\$5.75	\$6.75	\$7.50
\$4.32 and over	\$3.33 and over	\$4.22 and over	\$6.00	\$7.00	\$7.75

The applicable benefit rate for each employee shall be determined by the Classified Hourly Rate for the classification held by the employee for the greatest number of calendar days during the 24 consecutive months immediately preceding his last day worked. For the purpose of determining the applicable Benefit Class Code for any employee who retires during the life of this Agreement, the classified hourly rates as in effect on May 1, 1971, shall be applicable with respect to the above table for the duration of this Agreement, notwithstanding the fact that such rates shall be adjusted upward.

Section 6.02—On Early Retirement.

(a) (1) Any employee who shall have been in active employment on/or after effective date of the Plan and who, on/or after May 1, 1971 (but not retired prior to such date)

(i) Shall have attained the age of 60 years but not the age of 65 years, and shall have ten (10) or more years of credited service, or

(ii) Shall have attained the age of 55 years but not the age of 60 years, and whose combined years of age (to the nearest 1/12) and credited service shall total at least 85, or

(iii) Shall on and after 1/1/74 attained any age with 30 or more years of credited service,

may retire at his option and upon the employee's retirement he shall be eligible for a regular early retirement pension determined in accordance with paragraph (b) of this Section 6.02.

(2) Any employee who shall have been in active employment on/or after May 1, 1971, and who, on/or after May 1, 1971. (But not retired prior to such date), shall have attained the age of 55 years but not the age of 65 years, and shall have ten (10) or more years of credited service, may be retired at the option of the Company or under mutually satisfactory conditions, and upon the employee's retirement he shall be eligible for a special early retirement pension determined in accordance with paragraph (c) (ii) of this Section 6.02.

(b) The monthly regular early retirement pension payable to an employee for his lifetime who shall retire at his option under Section 6.02 (a) (1) above, and who shall make application to the Committee therefore, shall be a monthly pension commencing either on/or after the date of early retirement as specified in his application, in an amount determined under 6.01 above multiplied by the below percentage for his attained age on the date when the pension commences in accordance with his election:

Age When Pension Commences	*Percentage*	*Age When Pension Commences*	*Percentage*
47	30.4%	55	57.9%
48	32.8	56	63.5
49	35.4	57	69.4
50	38.3	58	75.2
51	41.5	59	80.8
52	45.0	60	86.7
53	48.9	61	93.3
54	53.2	62 or over	100.0

* For each additional full month of attained age, after payment of pension commences, the applicable percentage shall be determined by a straight-line interpolation from the percentage applicable to the next lower age to the percentage applicable to the next higher age in the above table, rounded to the nearest 1/10 of 1%.

(c) The monthly special retirement pension payable from the Pension Fund to an employee who shall retiree at the option of the Company or under mutually satisfactory conditions under the provisions of Section 6.02 (a) (2) of this Article VI, shall be as follows:

(i) that determined under 6.01 above plus

(ii) a temporary benefit of $6 for months commencing prior to January 1, 1972 and $7.50 for months commencing on and after January 1, 1972, times his years of credited service up to a maximum of 25 years, payable, if disabled, only for months for which a Social Security disability insurance benefit is denied on the merits but not beyond the qualifying age for an unreduced Social Security benefit by reason of age. An employee discharged for cause after such employee (i) shall have attained age 60 but before age 65 and shall have

ten (10) or more years of credited service, or (ii) shall have attained age 55 but not age 60 and whose combined years of age (to the nearest 1/12) and credited service shall total at least 85, shall be considered a retired employee and his monthly pension shall be the regular early retirement pension as provided under Section 6.02 (b) of this Article VI.

(d) For the purposes of Section 6.02 (c) of Article VI, a retired employee shall be considered as being eligible for benefits payable under the Federal Social Security Act even though he does not qualify for, or loses, such payments through failure to make application therefor or entering into covered employment.

Section 6.03—Termination of Employment Other Than Retirement.

(a) If the termination of employment of a participant shall occur after he shall have attained age 40 and completed 10 or more years of credited service and he is not eligible for any other pension, and if he files a timely application, he shall be entitled to a deferred pension payable monthly for life at the benefit rate determined in 6.01 above in effect at the time the termination of employment occurs times his years of credited service at date of termination of employment.

(b) The deferred pension shall be payable on the first day of the month following the month, (whichever is later),

(i) In which such former employee attains age 65 and has filed a written request with the employer not more than 60 days prior to his 65th birthday, or

(ii) In which the Company receives a written request for such pension, but not later than his 68th birthday. Otherwise, no deferred pension shall be payable at any time.

(c) If a former participant who is eligible for a deferred pension has not applied by the 30th day prior to the date he

attains age 65, a notice will be sent to his last known address informing him of his right to apply for a deferred pension.

Section 6.04—On Disability Retirement.

(a) An employee age 40 or over with 10 or more years of credited service who is determined by the Pension Committee to be totally and permanently disabled by bodily injury or illness so as to be prevented thereby from engaging for remuneration or profit in any occupation or employment with the Company covered by the then current collective bargaining agreement providing for his seniority shall be retired and be eligible for a disability retirement pension after such disability has continued for at least 52 weeks.

(b) The employees' monthly pension shall be

(i) that determined under 6.01 plus

(ii) a temporary benefit of $6, for months commencing prior to January 1, 1972, and $7.50 for months commencing on or after January 1, 1972, times his years of credited service (up to a maximum of 25 years), payable only for months for which a Social Security disability insurance benefit is denied on the merits but not beyond the qualifying age for an unreduced Social Security benefit by reason of age.

For purpose of this Section 6.04 (b) of Article VI, a retired employee shall be considered as being eligible for benefits payable under the Federal Social Security Act by reason of disability even though he does not qualify for, or loses such payments through failure to make application therefor.

(c) When a retired employee receiving a total and permanent disability retirement pension under Section 6.04 (c) shall reach normal retirement age, or the qualifying age for an unreduced Federal Social Security Benefit for age or disability, he thereafter shall receive a normal retirement pension in accordance with the provisions of Section 6.01 of this Article

VI, and shall no longer be considered to be on total and permanent disability retirement.

(d) The absence of an employee from active employment at the time he would be eligible for a pension under the Plan, shall not preclude his retirement without return to employment, provided that such absence is due to disability or sick leave, layoff or leave of absence approved by the Company, and provided that he shall not have incurred a break in his seniority since he was last in employment. The pension payable in the case of such employee shall not commence until the cessation of any weekly sickness or accident benefits payable to him by the Company, or from any source or fund to which the company shall have contributed directly or indirectly, except benefits payable under Workmen's Compensation other than weekly loss of wages.

Section 6.05—Deductions.

As used herein, "Deductions" means an amount which is to be separately calculated from time to time as to each Pensioners, and which may vary from month to month, which is aggregate of the following amounts:

(a) The monthly amount of any old age or retirement payments which the Pensioner is entitled to receive under any Federal or State law, other than the Federal Social Security Act, under or in support of which the Company contributes through taxes or otherwise, including but not limited to public benefits for disability as to employees retiring for that cause.

(b) The monthly amount of payments which the Pensioner is entitled to receive under any other pension or retirement plan financed or supported in whole or in part by payments whether directly or into or through a fund made by the Company.

(c) The monthly amount, if any, which the Pensioner receives as unemployment compensation benefits, which in whole or in part, is chargeable to the unemployment compensation account of the Company.

(d) The monthly amount which the Pensioner receives under any Workmen's Compensation Act on account of compensable injury or disease other than for the loss of use of a member or permanent loss of mental faculties incurred while in the employ of the Company.

(e) The monthly amount which the Pensioner receives under any other disability plan wholly or partially financed by the Company.

In case any payments includable in the Pensioner's Deductions is received by him on any basis other than monthly, the amount thereof shall be converted to a monthly basis, except that all cases where such payments are in a lump sum the amount of the lump sum payment shall be disregarded in calculating the Pensioner's Deductions, but no pension shall be payable to him until the aggregate of the monthly payments which he would otherwise receive hereunder equal the amount of such lump sum payment. In the event the monthly deductions of a Pensioner shall exceed the amount from which they are to be deducted, the excess shall not be accumulated or deducted in later months.

Section 6.06—Total and Permanent Disability.

No determination that a participant or pensioner is totally and permanently disabled shall be made unless it shall appear on the basis of competent medical testimony satisfactory to the Pension Committee that such person is unable because of his physical and mental condition to engage in remunerative occupation or employment, that such condition was not caused by his engaging in a criminal act or an intentionally self-

inflicted injury or illness, that such condition has existed for 52 weeks or more, and that such condition is presumably permanent. Permanent and total disability shall be conclusively deemed to have terminated if the Pensioner is re-employed by the Company in a regular position or enters other employment in a regular position.

Section 6.07—Conditions Precedent.

No one shall be entitled to a pension hereunder until his right thereto shall have been finally determined by the appropriate Pension Committee nor until he shall have submitted to such Committee in such form as the Committee requires all data requested by the Committee, including but not limited to, proof of date of birth and, in disability cases, medical evidence of continued disability from time to time.

Section 6.08—No Duplication of Pensions.

There shall be no duplication of pensions under this Plan. If a participant or pensioner is entitled to a pension under one of the foregoing sections, he shall not be entitled to a pension under any other of said sections.

Section 6.09—Source of Pensions.

Pensions shall be payable only from the Fund, and rights to pensions shall be enforceable only against the Fund.

Section 6.10—Payment of Small Amounts.

If the amount of the pension is less than $10.00 a month, payments may be made quarterly in advance in an actuarially equivalent amount, and if such quarterly payments should be less than ten dollars ($10.00) the pension payments may be made semi-annually in advance in an actuarially equivalent amount upon determination by the appropriate Pension Committee in each case on the advice of the Actuary.

Section 6.11—Re-employment.

In the event a Pensioner shall be re-employed by the Com-

pany, his right to pension payments shall cease during the period of such re-employment, and shall continue upon his subsequent termination of employment in the same amounts as he would have received had he not re-entered the employ of the Company.

Section 6.12—Non-alienation of Benefits.

The Benefits hereunder are intended for the personal protection of the participants and the pensioners as herein provided. No benefit under the Plan shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, and any attempt so to anticipate, alienate, sell, transfer, assign, pledge, encumber, or charge the same shall be void; nor shall any such benefit be in any manner liable for or subject to the debts, contracts, liabilities, engagements, or torts of the person entitled to such benefits, except as specifically provided in the Plan. If a participant or pensioner shall attempt to or shall alienate, sell, transfer, assign, pledge, encumber, or charge his pension, or any part thereof, or if because of his bankruptcy or the happening of any other event pension payments which would otherwise be made to him would become payable to anyone else or would not be enjoyed by him, his right to such pension payments shall thereupon terminate, but the appropriate Pension Committee may in its discretion authorize the payment of the same to or for the benefit of such pensioner, his spouse, children, or other dependants, or any of them, in such manner as such Committee may deem proper.

Section 6.13—Optional Settlements.

(a) In lieu of any pension which would otherwise be payable, an employee eligible therefor who has a spouse (for retirements with benefits commencing prior to January 1, 1972 and deferred vested separations prior to January 1, 1972, the

employee must have been married to such spouse for at least one year) may make written election on a form approved by the Pension Committee to receive a reduced pension during his lifetime with the provisions that following his death, a monthly optional survivor benefits shall be payable to his spouse as named in said election, during her further lifetime, if said spouse shall survive the employee and the employee has not cancelled the election, provided that:

(1) The election of survivor benefit option, for retirements with benefits commencing prior to January 1, 1972 and for separations prior to January 1, 1972 with deferred vested benefits, shall be made under the provisions of the Plan prior to this amendment.

(2) For retirements with benefits commencing on or after January 1, 1972 (and deferred vested separations on or after such date) the election of survivor benefit option shall be made at the time of application for a pension, said election to become effective on the date the first pension payment is payable. However, for disability retirements prior to age 55, the election shall be made during the calendar month in which the employee attains age 55, and it shall be effective on the first day of the calendar month following. Notwithstanding, if the employee has been married to his spouse less than one year on the date the election would otherwise become effective, the effective date thereof shall be deferred until the first day of the calendar month following the date the employee and his spouse have been married for one year.

(3) If the employee or the employee's designated spouse dies before the effective date of the survivor benefit election, the election shall be cancelled. An employee may cancel a survivor benefit election any time prior to its effective date. After a survivor option election becomes effective, an em-

ployee who retired with benefits commencing after January 1, 1972 (and deferred vested separations after such date) may cancel it only if the employee's spouse predeceases the employee or the employee and his spouse are divorced by court decree. Such a cancellation will be effective on the first day of the third month following the calendar month in which the appropriate Committee receives the employee's written notice of cancellation accompanied by satisfactory evidence of the death or divorce of his spouse.

(b) If the employee's age is the same as his spouse's age, the pension payable to the employee on and after the effective date of the election shall be reduced by 5% of the pension otherwise payable, but disregarding any temporary benefit payable for months for which the employee is denied a Social Security disability insurance benefit on the merits. Such percentage shall be reduced by subtracting 1/2 of 1% for each year in excess of 5 years that the spouse's age exceeds the employee's age (up to a maximum of 5%) (the age of each, for purposes hereof, being the age at his or her last birthday prior to the effective date of the election) and increased by adding 1/2 of 1% for each year in excess of 5 years that the spouse's age is less than the employee's age. An employee cancels his election of survivor option after its effective date because of the death or divorce of his spouse in accordance with Section 6.13 (a) (3), his pension will be increased on and after the effective date of cancellation by disregarding said election.

(c) The optional survivor benefit payable to the spouse, during the further lifetime of such surviving spouse, shall be 55% of the employee's reduced pension, disregarding any temporary benefit payable for months for which the employee is denied a Social Security disability insurance benefit on the merits, provided that no benefit shall be payable under this

subsection for any month for which the surviving spouse of a re-employed pensioner may be entitled to receive a transition or bridge survivor benefit under the insurance plan of the Company.

Section 6.14—Automatic Spouse Option.

If an Employee, age 55 or older, dies after he has met the age and credited service requirements for a regular early or normal retirement pension but prior to the date as of which his pension begins, and if he leaves a surviving spouse to whom he has been married for at least one year, a monthly automatic survivor benefit shall be payable for the lifetime of such surviving spouse. The automatic survivor benefit payable to such spouse shall be the amount which would have been payable to such surviving spouse if the employee had retired on the date of his death and had effectively elected the survivor benefit option under Section 6.13 above, provided that no benefit shall be payable hereunder for any month for which the surviving spouse may be entitled to receive a transition or bridge survivor benefit under the insurance plan of the Company.

Section 6.15—Supplemental Allowance.

(a) An employee who

(i) becomes eligible for a disability retirement pension, a special early retirement pension or a regular early retirement pension, and

(ii) agrees to restrict his participation in the labor force within the earnings limit of the then applicable federal Social Security Act, and

(iii) files his application for a pension within two (2) years of the last day worked for the Company

shall receive a monthly supplemental allowance in addition to his pension provided, however, that an employee who re-

tires while on an approved leave of absence for service with the International Union shall have his supplemental allowance based only on his actual credited service as an employee of the Company excluding any credited service while on such leave of absence.

(b) Each monthly supplemental allowance shall be that amount which when added to his total monthly pension will equal the lessor of (A) or (B) below:

(A) (i) with respect to amounts payable for months prior to January 1, 1973, $400 reduced by 1/360th for each month that his credited service is less than 30 years, and

(ii) with respect to amounts payable for months on or after January 1, 1973, $450 reduced by 1/360th for each month that his credited service is less than 30 years, provided, however,

(iii) for an employees with at least 30 years credited service who retires with benefits commencing on or after January 1, 1974, it shall be $500 for months prior to the first month after attainment of age 62.

and if less than age 60 at retirement, reduced in all cases by multiplying the amount by 60 over the number of months from retirement to and including the month in which he would reach age 65.

(B) 70% of 173-1/3 times his average hourly earnings as determined for the purpose of computing his Union dues under the current applicable collective bargaining agreement, using the date of retirement as if it were the payroll date for computing Union dues

reduced in either case by $7.50 ($6.00 for months commencing prior to January 1, 1972) times years of credited service up to a maximum of 25 years for any months for which the em-

ployee is or becomes eligible for a Social Security disability insurance benefit, or after which the employee attained the qualifying age for an unreduced Social Security benefits by reason of age.

The amount of supplemental allowance shall be computed by disregarding any election of survivor benefit option and in the case of regular early retirement as if the early retirement pension began at retirement.

(c) The supplemental allowance shall commence on the first day of the month following the later of (i) the date on which the employee retires, or (ii) the date on which a timely application is filed, and shall be payable monthly thereafter and shall cease on the earlier of age 65, death, re-employment by the Company, or cessation of pension for any other reason.

If the retiree has earnings after retirement in any calendar year in excess of the amount permitted under the then current federal Social Security Act, a penalty equal to double the amount by which such earnings exceed the amount permitted shall be charged against each succeeding supplemental allowance which the retiree would otherwise be entitled to receive until the full amount of such penalty is satisfied.

If any retiree shall be re-employed by the Company, and his seniority restored, the forfeiture shall not affect adversely any right he would otherwise have to receive a supplemental allowance if he should again cease employment.

Each retiree receiving a supplemental allowance may be required, in accordance with procedures established by the Committee, to certify that his earnings have not been in excess of the permitted amount and to furnish verification of the amount of his earnings. Unless otherwise recovered, the amount of any payments of supplemental allowance made

after a retiree shall have ceased to be entitled to receive such allowance because of excess earnings, may be deducted from his future monthly pension payable to him.

Section 6.16—Provisions Applicable to Terminations Prior to May 1, 1971 (and to Certain Terminations on or after May 1, 1971).

(a) The benefits, if any, payable to employees whose seniority is terminated prior to May 1, 1971, shall be determined in accordance with the Plan in effect prior to this amendment as modified by this Section.

1. The following sections of this amended Plan shall be applicable to employees who lost seniority prior to May 1, 1971 and to employees who lost seniority after April 30, 1971 and retired prior to January 1, 1972.

Section

6.13 (a)(3) and (b)

Application

Cancellation of survivor option upon death or divorce (restoration) provided that in the case of divorce the cancellation only applies to the increases in pension shown in paragraph 2 below.

2. The following table summarizes the increases in benefits effective January 1, 1972 and January 1, 1973 and should be read in conjunction with the further provisions of this Section:

Date Monthly Pension Commenced to Be Payable	*Normal Pension* Per Year Maximum Credited Service Increased*			*Temporary Benefit per Year Credited Service Increased*		
	From	*To 1/1/72*	*To 1/1/73*	*From*	*To 1/1/72*	*Maximum Amount*
Prior to 1/1/57	$6.45**	$6.95**	$7.45**			
1/1/57 to 12/31/59 (Local 337 & 1147 to 2/29/60	4.20	4.70	5.20			
1/1/60 to 4/30/62 (Local 337 & 1147 from 3/1/60)	4.60	5.10	5.60			
5/1/62 to 4/30/63	4.95	5.45	5.95			
5/1/63 to 4/30/66	5.25	5.75	6.25	$2.80	$3.80	$155
5/1/66 to 4/30/68	5.25	5.75	6.25	5.20	6.20	155
5/1/68 to 4/30/69	5.50 5.75 6.00	6.00 6.25 6.50	6.50 6.75 7.00	5.20	6.20	155
5/1/69 to 4/30/71	5.50 5.75 6.00	6.00 6.25 6.50	6.50 6.75 7.00	6.00	7.00	175

* Including, if applicable, $1.00 (50¢ as of 1/1/72 increase) waived for election of special survivor option.

** Reduced by Social Security Benefits in effect at retirement.

NOTES:

Pensions payable on and after January 1, 1972 and January 1, 1973 for early retirements under the Plan shall be increased in the same proportion as the increase in normal pension per year of credited service as shown in the table above.

Temporary benefits payable for months for which a Social Security disability insurance benefit is denied shall be increased as shown in the table above.

Optional survivor benefits (but not special survivor benefits) payable on and after January 1, 1972 and January 1, 1973 shall be increased in the same proportion as the normal pension increase, provided the retired employee is living on such dates.

Deferred Vested Pensions are not increased under this Paragraph 2.

3. Supplemental allowances payable on and after January 1, 1972 and January 1, 1973 shall be redetermined as if the new applicable rates set forth in paragraph 2 preceding had been in effect when the retired employee's benefits commenced and, on and after January 1, 1973, the supplemental allowance before offsets and reductions were $450 instead of $400, provided, however, that the offset per year of credited service applicable if the retired employee is eligible for an unreduced Social Security Benefit shall be increased in accordance with the following table:

Date Retired Employee Became Eligible for Unreduced Social Security	*Date Monthly Pension Commenced to be Payable*	*Offset per Year Credit Service up to Maximum Increased*		
		From	*To*	*Maximum*
Up to 4/30/69	Up to 4/30/69	$5.20	$6.20	$155
5/1/69 to 4/30/71	5/1/69 to 4/30/71	6.00	7.00	175
5/1/71 or later	5/1/71 to 12/31/71	6.00	7.50	187

If the survivor benefit option had been elected prior to May 1, 1971, this redetermination shall not reduce the supplemental allowance by more than the increase in the retired employee's monthly pension.

4. Employees who retired under the disability provisions of the Plan prior to July 1, 1968 and who were not previously eligible to elect the 1968 special survivor option because they had not attained age 60 prior to July 1, 1968, may elect a Special Survivor option effective January 1, 1972, or, if later, the month following attainment of age 60. If elected, the retired employee will accept a reduction in his normal pension of 50 cents per month for each year of credited service for benefits payable until January 1, 1973, and $1 per month for each year

of credited service for benefits payable on and after January 1, 1973. The benefit payable to the surviving spouse shall be 80 cents per month for each year of credited service in the event of the death of the employee prior to January 1, 1973 and $1.60 per month for each year of credited service in the event of the employee's death on or after January 1, 1973.

Section 6.17—No Other Benefits.

No benefits other than those above specifically provided for are to be provided under this Plan. No employee shall have any vested right under the Plan prior to his retirement and then only to the extent specifically provided herein.

. . .

ARTICLE IX
Funding

Section 9.01—Establishment of Fund.

The Company shall establish one of more funds, herein collectively referred to as the "Fund", in which shall be held and invested, administered and disbursed all moneys contributed by the Company from time to time in support of the Plan.

Section 9.02—Administration of Fund.

The Fund shall be administered by a Trustee or Trustees selected and appointed by the Company or by an insurance company selected by the Company or by any combination of one or more trustees and one or more such insurance companies. The Company shall have the sole right to remove any Trustee so appointed by it or to replace any insurance company so selected by it and to appoint a successor or successors to either of them and to fill vacancies.

Section 9.03—Contracts with Trustee or Insurance Company.

The Company shall have the sole right to determine upon the terms and provisions of each and every contract entered into with a Trustee or an insurance company and to amend

and terminate any such contract from time to time. Each such contract may but shall not necessarily include, in addition to such other provisions as may be agreed upon between such Trustee and insurance company and the Company, provisions in substance as follows:

(a) That funds may be held, administered and disbursed as a commingled fund without distinction between principal and income.

(b) That the sole responsibility of any Trustee so designated shall be to hold, invest and reinvest the Trust Fund, as provided in the Trust Agreement or any modification or amendment thereof, and to pay moneys from the Fund to or for the account of the appropriate Pension Committee or on its order from time to time for the purposes of the Plan.

(c) That any such Trustee or insurance company shall be fully protected in paying out or applying moneys from the Fund from time to time upon orders or requisitions of the appropriate Pension Committee.

(d) That funds administered by a Trustee may be invested in each and every kind of property authorized for the investment of Trust Funds under the laws of the State of Minnesota as they exist at the Effective Date of the Plan, including securities issued by the Company, subject to such supervision and regulation as may be imposed on such investments by the Commissioner of Internal Revenue, that Trust Funds may be paid to any insurance company or companies selected and designated by the Company for the purpose of annuities to provide pensions under the Plan, and that the Trustee may, but shall not be required to, acquire and hold such rights and beneficial interests in and under any such contract as the Company may specify.

(e) That all reasonable fees, charges, and expenses and disbursements of any Trustee so designated shall be payable from the Fund and shall constitute a lien thereon until paid.

(f) That each Trustee shall keep accurate and detailed records and accounts of all transactions affecting the Fund under its administration; that such records and accounts shall be open to inspection by any person designated by the Company or by any appropriate Pension Committee at all reasonable times; that at least annually a written account of the administration of the Fund shall be prepared and submitted to the Company and, as to each Pension Unit, to the appropriate Pension Committee; that such accounts shall be available for inspection at reasonable times by the participants in the Pension Unit involved; that upon the expiration of 90 days from the filing of any such account the Trustee shall be forever released and discharged from any liability or accountability to any one as respects the propriety of its acts or transactions shown in such account, except in respect to such as to which the appropriate Pension Committee or the Company shall file written exceptions or objections with the Trustee within such 90-day period; and that the Trustee may take such action from time to time as it may deem necessary or advisable to procure a settlement and allowance of its accounts by any court having jurisdiction.

(g) That the Trustee may resign or be removed by the Company at any time on reasonable notice, and that in the event of such resignation the Company shall appoint a successor.

(h) That in the event of the termination of the Plan, either in its entirety or as to any separate Pension Unit, any Trust Fund then existing and affecting such unit shall nevertheless continue in accordance with the provisions of the Plan.

Any such insurance contract, whether arranged by agreement directly between the Company and the insurance company or between a Trustee and the insurance company, may, but shall not necessarily, be of the deposit administration type.

Section 9.04—Rights of Employees in Fund.

No employee, participant or pensioner shall have any right to, or interest in, any part of any Trust Fund created hereunder, upon termination of employment or otherwise, except as provided under this Plan and only to the extent therein provided. All payments of benefits as provided for in this Plan shall be made only out of the Fund or Funds of the Plan, and neither the Company nor any Trustee nor any Pension Committee or member thereof shall be liable therefor in any manner or to any extent.

Section 9.05

The unfunded net deficiency as of January 1, 1971 shall be amortized over a thirty-five (35) year period from January 1, 1971. The deficiencies resulting from benefit increases effective January 1, 1972 and January 1, 1973 shall be funded uniformly over a thirty-five (35) year period from January 1, 1972 and January 1, 1973, respectively.

. . .

ARTICLE X

Certain Rights of Company

Section 10.01—Amendments.

The Company shall have the sole right from time to time to amend the Plan in such manner as it shall determine, but no amendment shall be effective if it shall attempt or purport to provide for the use or diversion of any of the funds of the Plan or the income therefrom to purposes other than for the exclusive benefit of participants or pensioners, unless such amendment shall be one necessary and then only to the extent

necessary to make the Plan comply with any applicable law, regulation or order or with such provisions of the Internal Revenue Code and regulations issued thereunder as must be complied with to qualify the Trust or any insurance contract and the Plan as affected thereby as exempt from taxation under said Code.

Section 10.02—Termination of Entire Plan.

The Company shall have the sole right at any time to terminate the entire Plan. In the event of such termination, the funds of the Plan shall be used to the extent adequate for the purposes as follows:

(a) To provide for the continuation of pension payments to all pensioners who shall have retired prior to the date of such termination without reference to the order of retirement and to the beneficiaries and contingent annuitants of such pensioners under optional settlements duly elected in accordance with the provisions of the Plan.

(b) To provide for pensions upon subsequent retirement as if the Plan were then in effect to employees who were participants age 65 or over at the date of such termination, without reference to the order in which they shall have reached such age or the order in which they shall retire.

(c) To provide for pensions upon subsequent retirement as if the Plan were then in effect to employees who were participants under age 65 at the date of such termination in the order in which they retire.

The Company shall also have the sole right to terminate the Plan at any time as to any one or more Pension Units. In such event, if funds of the Plan be not then segregated for such Pension Unit, the Actuary shall cause such segregation to be made in the manner and in the amount determined upon by him, in accordance with sound actuarial principles which he

shall determine to be fair and equitable as to all participants and pensioners involved, including those as to whom the Plan is not terminated, and the funds so segregated shall thereafter be held and administered as a separate fund for the exclusive benefit of such Pension Unit for the purpose of providing pensions to them in the same manner and order of preference as is specified in paragraphs (a), (b), and (c) of the preceding section hereof. If funds be already segregated at the time of such termination for such Pension Unit, they shall continue to be held and administered for the benefit of the group for which they were segregated and shall be used for the purposes stated in Section 10.02 hereof and in the order of priority there stated for the exclusive benefit of such group. Funds so segregated before or after such termination, may be held either in a separate Trust Fund or applied to the purchase of insurance or annuity contracts or in any combination of said methods as the Company shall direct. All determinations made by the Actuary in connection therewith shall be final and binding upon all persons in interest.

Section 10.04—Rights of Company in Funds.

In the event of the complete or partial termination of the Plan, the Company shall be entitled to receive any amount or amounts that may remain in the Fund or Funds after satisfaction of all liabilities of the Plan shall be deemed to be satisfied for this purpose if annuity contracts issued by an insurance company providing for the payment by it of all benefits to which participants and pensioners are entitled are procured.

C. Exhibits 4A and 4B to Affidavit of H. Herbert Phillips—Pension Guarantee Letters.

MINNEAPOLIS-MOLINE, INC.,
Hopkins, Minnesota 55343

September 26, 1968

The International Union, United Automobile,
Aerospace and Agricultural Implement Workers
of America (UAW) and Locals 932, 107, 1147 and 337

Re: Pension Guarantee

Gentlemen:

During our recent contract negotiations the Union proposed and the Company agreed to guarantee retirement benefits under the Retirement Income Plan in the event there should be a closing of the Minneapolis-Moline Plants and resulting termination of the Plan. Such guarantee shall be on the following basis and subject to the following conditions:

1. The guarantee shall apply to the deficiency, if any, after distribution of the Trust Fund assets in accordance with the termination provisions of the Plan.
2. The guarantee shall apply only to the level of benefits set forth in the Plan as amended by the Company-Union Agreement of May 10, 1965, for all credited service as an employee of White Motor Corporation, plus $2.00 per month for all prior credited service with Minneapolis-Moline, Inc. Such credited service with White and Minneapolis-Moline must have been continuous and unbroken.
3. The guarantee shall apply only to those employees who have ten or more years of credited service at the date of termination of the Plan.
4. The Company's obligations under the guarantee may be by deposit of the necessary monies in the Trust Fund,

by the purchase of annuities, or by direct payment of the guaranteed benefit as such payments become due under the Plan.

5. The guarantee shall continue in effect for the period of the new Pension Agreement and for a period of one year thereafter, or until renewal of the Pension Agreement, whichever date occurs first.
6. This guarantee shall be automatically cancelled in the event of enactment of legislation providing for the reinsurance of benefit plan benefits at a level at least equal to the guarantee set forth herein.

Yours very truly,
W. J. HUNT
Vice President & Treasurer

WJH/mf

MINNEAPOLIS-MOLINE
Division of White Motor Corporation
Hopkins, Minnesota 55343

March 3, 1972

The International Union, United Automobile,
Aerospace and Agricultural Implement Workers
of America (UAW) and Locals 932, 107, 1147 and 337

Re: Pension Guarantee

Gentlemen:

During the contract negotiations, the Union proposed and the Company agreed to guarantee retirement benefits under the Pension Plan in the event there should be a closing of the Minneapolis-Moline Plants at Lake Street, Minneapolis and Hopkins, Minnesota and a resulting termination of the Plan. Such guarantee shall be on the following basis and subject to the following conditions:

1. The guarantee shall apply to the deficiency, if any, after the disposition of Trust Fund assets in accordance with the termination provisions of the Plan.
2. The guarantee shall apply only to the level of benefits set forth in the Plan as amended by the Company-Union Agreement of May 10, 1968, for all credited service as an employee of White Motor Corporation, plus $2.00 per month for all prior credited service with Minneapolis-Moline, Inc., prior to acquisition by White Motor Corporation. Such credited service with White and Minneapolis-Moline must have been continuous and unbroken.
3. The guarantee shall apply only to those employees who have ten (10) or more years of credited service at the date of termination of the Plan.
4. The Company's obligations under the guarantee may be by deposit of the necessary monies in the Trust Fund, by the purchase of annuities, or by direct payment of the guaranteed benefit as such payments become due under the Plan.
5. The guarantee shall continue in effect for the period of the new Pension Agreement or until renewal of the Pension Agreement, whichever date occurs first.
6. The guarantee shall be automatically canceled in the event of enactment of legislation providing for the reinsurance of benefit plan benefits at a level at least equal to the guarantee set forth herein.

Yours very truly,
DONALD B. WYZLIC
Personnel Manager

D. Excerpts from Exhibit 8 to Affidavit of H. Herbert Phillips, Consisting of letter of August 18, 1975 from Defendant to Plaintiffs with Addendum I.

STATE OF MINNESOTA
DEPARTMENT OF LABOR AND INDUSTRY
SAINT PAUL 55101

August 18, 1975

White Motor Corporation
100 Erie View Plaza
Cleveland, Ohio 44114
Attention: John E. Sheehan, President

White Farm Equipment Company
2625 Butterfield Road
Oakbrook, Illinois 60521
Attention: R. E. Kidder, President

Gentlemen:

The State of Minnesota Department of Labor and Industry hereby notifies White Motor Corporation and its wholly-owned subsidiary White Farm Equipment Company (hereinafter jointly referred to as the "Company") of the assessment of a pension funding charge pursuant to the Minnesota Private Pension Benefits Protection Act, Minn. Stat. ch. 181B (1974) ("the Minnesota Pension Act").

By letter dated April 16, 1974, the Company notified the Department of Labor and Industry of the Company's intent to terminate and cease to operate the Minneapolis-Moline Pension Plan for all purposes effective May 1, 1974. Subsequent to said notification, the Pension Division of the Department of Labor and Industry conducted an investigation to determine the respective liabilities and rights, under the Minnesota Pension Act, of the Company and its employees who had been employed at a place of employment in Minnesota and who had participated in the Minneapolis-Moline Pension Plan.

The pertinent information acquired through that investigation is tabulated on the four Addenda attached hereto. Based on that information, the Pension Division has ascertained that under the provisions of the Minnesota Pension Act the Company owes a pension funding charge to the retired,[1] active,[2] and deferred vested employees listed in Addenda II through IV, respectively. The pension funding charge is expressed in Addendum I as the sum of the present values of the monthly retirement benefits to which the listed employees are entitled, as specified in Addenda II-IV.

Pursuant to Minn. Stat. §181B.12, the pension funding charge liability of the Company to the listed employees is to be satisfied by the purchase of prepaid deferred annuities payable to each employee upon their reaching normal retirement age, or immediately to those already receiving benefits under the pension plan, in an amount equal to the monthly retirement benefit which each employee has earned and, where applicable, to the employee's surviving spouse in an amount equal to the survivorship benefit which the employee has earned. The cost of the purchase of said annuities need not be equivalent to the pension funding charge indicated in Addendum I. Such purchase shall be made through a trust authorized by the United States Internal Revenue Service to make such purchases in a manner which exempts from federal income taxation the money used to purchase the annuity and all income earned by such annuity up to the date of distribution of the annuity amount. Proof of such purchase shall be provided to the Pension Division within 72 hours thereof.

---

[1] Some of the names listed in Addendum II are surviving spouses who are now receiving the benefits indicated pursuant to the survivorship option exercised by a deceased employee.

[2] The Company shall not owe a pension funding charge for any employee who the Department determines has been retained in employment without loss of pension credits under a new pension plan.

A hearing will be provided for the determination and resolution of any disputed issues concerning the assessed pension funding charge liability if a written Request for Hearing is served upon the Department of Labor and Industry within thirty (30) days of receipt of this letter. Such Request for Hearing shall include a short and plain statement of all issues on which a hearing is desired, the determination sought, and the grounds therefor. Issues which may be raised included, but are not limited to: objections to the assessed pension funding charge liability, manner and method of satisfaction of said liability, and determination of amounts settled or compromised. Within ten (10) days of receipt of a timely-served Request for Hearing, the Department of Labor and Industry shall appoint a hearing officer and commence contested case proceedings pursuant to Minn. Reg. Atty. Gen. 407, Rule 4.

Unless objection is made hereto in the manner specified above, the assessed pension funding charge liability shall be deemed certified pursuant to Minn. Stat. § 181B.11 and shall be due and payable in the manner heretofore described sixty (60) days from receipt of this notice. Pursuant to Minn. Stat. § 181B.11, if said liability is not satisfied within the time provided, interest thereon shall accrue from the date due at the rate of eight percent (8%) per annum until the liability and interest are paid.

DEPARTMENT OF LABOR
AND INDUSTRY
E. I. MALONE
Commissioner

ADDENDUM I

MINNEAPOLIS-MOLINE
HOURLY PENSION PLAN

SUMMARY OF FUNDING CHARGE LIABILITY

Addendum II - Retirees	
1. Sum of Present Values of Monthly Benefits* as of April 30, 1974	$13,440,936
2. Sum of Present Values of Supplemental Benefits** as of April 30, 1974	689,258
Addendum III - Active Employees	
Sum of Present Values of Monthly Benefits* as of April 30, 1974	3,346,640
Addendum IV - Deferred Vested Employees	
Sum of Present Values of Monthly Benefits*** as of April 30, 1974	1,673,219
PENSION FUNDING CHARGE	$19,150,053

* Present values of the individual 1973-level benefits were determined by multiplying the present values of the 1972-level benefits (supplied by White Motor Corporation based on an interest assumption of 5-3/4% per annum) by the ratio of the 1973-level benefits to the 1972-level benefits.

** Present values of 6% monthly annuities certain payable from May, 1974, to expiration date.

*** Present values as supplied by White Motor Corporation.

In the Supreme Court of the United States

October Term, 1976

No. 76-1184

E. I. MALONE, Commissioner of Labor and Industry for the State of Minnesota,
Appellant,

vs.

WHITE MOTOR CORPORATION and WHITE FARM EQUIPMENT COMPANY,
Appellees.

On Appeal From the United States Court of Appeals for the Eighth Circuit

MOTION TO DISMISS OR AFFIRM

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E. I. MALONE, Commissioner of Labor and Industry for the State of Minnesota,
Appellant,

vs.

WHITE MOTOR CORPORATION and WHITE FARM EQUIPMENT COMPANY,
Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MOTION TO DISMISS OR AFFIRM

Appellees move the Court to dismiss the appeal herein or, in the alternative, to affirm the judgment of the United States Court of Appeals for the Eighth Circuit on the following grounds:

1. The decision of the Court of Appeals is clearly correct under the principles applied by this Court in *Local 24, Teamsters v. Oliver*, 358 U.S. 283 (1959), and reaffirmed in *Lodge 76, Machinists v. Wisconsin Employment Relations Commission*, 427 U.S. 132 (1976).

2. There is no conflict of decision.

3. The question on which the decision of the cause depends is so unsubstantial as not to need further argument.

QUESTION PRESENTED

Whether federal labor policy preempts the authority of the State of Minnesota to impose upon appellees, by legislation, pension obligations and pension funding obligations which differ materially from the pension and pension funding obligations contained in collective bargaining agreements between appellees and unions representing their employees.

STATUTE INVOLVED

Pertinent provisions of the Minnesota Private Pension Benefits Protection Act, Minn. Stat. ch. 181B (1974) (hereinafter the Minnesota Pension Act) are set forth and described in the opinion of the Court of Appeals, 545 F.2d 599, at 601-2. The statute in its entirety is set forth in Appendix D to appellant's jurisdictional statement.

STATEMENT

White Motor is an Ohio corporation. In 1963, as a result of acquisition of the assets of Minneapolis-Moline, Inc., White Farm, a subsidiary of White Motor, began operating farm equipment manufacturing plants in Hopkins and Minneapolis, Minnesota. Both before and after this acquisition, the employees at these plants were represented by a labor union. Since 1955 that union has been the UAW.[1]

[1] International Union, United Automobile, Aerospace and Agricultural Implement Workers of America and certain of its local unions are collectively called the "UAW."

In 1950, a pension plan was established through collective bargaining for these employees. In subsequent collective bargaining agreements with White[2] and its predecessor the pension benefits negotiated for these employees were increased substantially. In 1968, collective bargaining negotiations resulted in the addition of a pension plan provision which required funding of unpaid past-service liability on a 30-year funding basis, and in 1971 this provision was amended to modify the amortization period to 35 years.[3]

In early 1972, White and the UAW entered into collective bargaining agreements covering employees at the Hopkins and Minneapolis plants for the period May 1, 1971 to May 1, 1974. Such collective agreements incorporated a "Pension Agreement and Plan" (hereinafter the "Plan"), as amended by the 1971-1972 collective bargaining negotiations. The Plan adopted in these 1971-1972 negotiations provided, in language unchanged since the first pension plan established in 1950 collective bargaining, as follows:

> *Section 6.09 - Source of Pensions.*
>
> Pensions shall be payable only from the Fund and rights to pensions shall be enforceable only against the Fund.
>
> * * * * *
>
> *Section 9.04 - Rights of Employees in the Fund.*
>
> * * * All payments of benefits as provided for in this Plan shall be made only out of the Fund or Funds of the Plan and neither the Company nor any Trustee nor any Pension Committee or Member there-

[2] White Motor and White Farm, its subsidiary, are collectively referred to herein as "White."

[3] Unpaid past-service liability is, at any given time, the excess of accrued liability of a pension fund over the present value of the assets of that fund. Deferred funding of past-service liability is a common feature of pension plans.

of shall be liable therefor in any manner or to any extent. (Court of Appeals Opinion, 545 F.2d at 602, App. A-6-A-7.)[4]

Contrary to the inference of defendant (D.Br. 12, 14),[5] these contractual limitations upon the pension liability of White and its predecessor were negotiated before the retirement of any employees under the pension plan. Therefore, this case raises no question concerning collective bargaining about benefits for retirees.[6]

During the 1968 and 1971 collective bargaining negotiations White, as a result of UAW bargaining insistence which stemmed from the union's recognition of the funding limits of the Plan and the possibility of plant closings and termination of the Plan, gave certain Pension Guarantees applicable to the Hopkins plant and the Minneapolis plant in the event of plant closing and termination of the Plan. By these guarantees, White assumed, in addition to its funding obligations under the Plan, liability for pension payments in the amount of approximately $7,000,000 (545 F.2d, at 603, App. A-7). Defendant's suggestion (D.Br. 4) that the pension "Guarantee Letters" operated to reduce White's pension funding obligations under the collectively bargained Plan is simply untrue.

Defendant has also mischaracterized the Plan by references (D.Br. 3-6) to "promised" pension benefits. The implication, of course, is that the Minnesota Pension Act is simply designed to force White to honor its contracts. The limitations on employer liability described above were

[4] References to pages of Appendix A to the jurisdictional statement are noted as "App. A- ."

[5] References to pages of appellant's jurisdictional statement are noted as "D.Br. ".

[6] *Allied Chem. & Alkali Workers v. Pittsburgh Plate Glass Co.*, 404 U.S. 157 (1971). Of course, contracts made by an employer with the union representing its employees and for the benefit of retirees of that employer are valid and enforceable, as recognized in *Pittsburgh Plate Glass*, 404 U.S. at 181, n.20.

part of the negotiated pension plan entered into between the employer and a knowledgeable and experienced union representing its employees. White has met all of its pension obligations under its Minnesota agreements with the UAW. The only issue in this case relates to the effort of the State to impose additional pension obligations on White, which are not required by the White-UAW Plan.

After suffering substantial losses from 1969 to 1971 at the White Farm division, White in January, 1972 informed the UAW of its intention to close the Minneapolis and Hopkins plants. As a result of subsequent negotiations, the Hopkins plant has continued to operate, but operations at the Minneapolis plant were terminated in June of 1972. Relying upon Section 10.02 of the Plan, which expressly provided that the employer had the right to terminate the Plan at any time, White on June 30, 1972 acted to terminate the Plan. Arbitration and litigation ensued, and an arbitration award was entered, and subsequently confirmed in court proceedings, ruling that the Plan could not be effectively terminated prior to May 1, 1974, the expiration date of the collective bargaining agreement then in effect. By reason of this arbitration award, White took action again to terminate the Plan on May 1, 1974, and the Plan terminated on that date.

After the initial attempt by White to terminate the Plan and just twenty days before the Plan's eventual termination on May 1, 1974, the Minnesota Legislature on April 10, 1974 enacted the Minnesota Pension Act. Sections 181B.03-.06 of that Act purport to impose a "pension funding charge" directly on employers. Irrespective of contrary terms in any collective bargaining agreement, those sections provide that upon termination of a pension plan, any employee with ten years of credited service shall have a vested right to specified pension benefits computed

in accordance with the statute. That right is enforceable directly against the employer and not against the pension fund to which the employer has contributed. Sections 181B.09-.12 of the Minnesota Pension Act provide that the Commissioner of Labor and Industry, the defendant herein, shall certify amounts owing by an employer under that Act, which amounts are declared to "be a lien upon the employer's assets." Payment is to be made through the employer's purchase of prepaid deferred annuities for each employee to whom there is found to be liability.

The Minnesota Pension Act conflicts with the White-UAW Plan in a number of material respects, accurately described by the Court of Appeals as follows:

> The Minnesota Pension Act obligations conflict with White Motor's pension plan provisions in the following respects: (1) the Act grants employees vested rights to pension benefits which are not available under the pension plan; (2) to the extent of any deficiency in the pension fund, the Act requires satisfaction of pension benefits from the general assets of the employer, while the pension plan provides that benefits shall be paid only out of the pension fund; and (3) the Act does not permit employers to escape liability for funding of pension rights, but the pension plan permits White Motor to terminate the plan at any time, and in so doing end any liability for future payments to the pension fund, save those specifically guaranteed. Thus, essential features of the pension plan, deferred funding of past service liability coupled with limited employer liability and the power to terminate, were negated by the Pension Act. 545 F.2d at 603, App. A-8.

PROCEEDINGS BELOW

After the Commissioner of Labor and Industry had asserted his intention to enforce the Minnesota Pension Act against White, and had taken steps to do so, this action was filed on May 15, 1975. In an amended complaint for a declaratory judgment filed on July 24, 1975, plaintiffs challenged the constitutionality of the Minnesota Pension Act on a number of grounds and also contended that enforcement of the Act against them was preempted by federal labor law and policy.

When, on August 18, 1975, defendant notified plaintiffs that he was assessing against them a pension funding charge of $19,150,053 under the Minnesota Pension Act, plaintiffs filed motions for summary judgment or for a preliminary injunction on the sole ground that, by reason of conflict with federal labor law and policy, the Minnesota Pension Act, as applied to plaintiffs, was preempted. The District Court overruled plaintiffs' motions solely because of its determination that the Minnesota Pension Act was not preempted.

Plaintiffs appealed from the order of the District Court denying their motion for a preliminary injunction. The Court of Appeals reversed on the ground that the Minnesota Pension Act was preempted by federal labor policy and remanded the case for entry of judgment in conformity with the finding of preemption.

ARGUMENT

1. States May Not Interfere With the Substantive Terms of Collective Bargaining Agreements Negotiated Under the Mandate of the National Labor Relations Act.

The Minnesota Pension Act is in conflict with the White pension agreement and plan (the Plan) in the

respects outlined by the Court of Appeals. Defendant does not discuss the Court of Appeals' careful analysis of the conflicts between the Minnesota Pension Act and the Plan here involved, quoted *supra*, p. 6. Rather, defendant argues that the Minnesota Pension Act is simply directed at the termination of pension plans and the forfeiture of pension benefits and therefore does not interfere with the substantive terms of a collective bargaining agreement or prevent the parties from carrying out their agreement (D.Br. 10-12). This semantic gambit cannot obscure the fact that the Minnesota Pension Act is designed to and does nullify provisions of the collectively bargained pension plan controlling such critical facets of the pension benefits scheme as eligibility, vesting and the extent of the employer's liability for payment of pensions. Thus, from the time a collectively bargained pension plan was established in 1950 at the Minnesota plants, the plan provided that White (or its predecessor) would not be liable for payment of pension benefits beyond the funding obligations set forth in the plan. What could better illustrate a direct conflict between the Minnesota Pension Act and the White-UAW Plan than defendant's assessment against White of a pension funding charge of $19,150,053 more than White's contractural funding obligation? Defendant's suggestion (D.Br. 8, 15), that the Minnesota Pension Act relates only "tangentially" to the collectively bargained Plan and is only "peripheral to the bargaining process" is clearly contrary to the facts.

Federal labor law and policy protect not only the process of collective bargaining on pensions and other mandatory bargaining subjects[7] but also the substantive terms of the agreement which is the product of that bargaining.

[7] Pensions are a mandatory subject of bargaining under federal labor law. *Inland Steel Co. v. NLRB*, 170 F.2d 247 (7th Cir. 1948), *cert. denied*, 336 U.S. 960 (1949).

The Court of Appeals in its decision below so held and said:

> If states cannot control the economic weapons of the parties at the bargaining table, *a fortiori*, they may not directly control the substantive terms of the contract which results from that bargaining. 545 F.2d at 606, App. A-15.

This Court has long recognized this principle. In *Railway Employes' Dept. v. Hanson*, 351 U.S. 225 (1956), this Court said:

> A Union agreement made pursuant to the Railway Labor Act has, therefore, the imprimatur of the federal law upon it and, by force of the Supremacy Clause of Article VI of the Constitution, could not be made illegal nor vitiated by any provision of the laws of a State. 351 U.S. at 232.

The following year, in *California v. Taylor*, 353 U.S. 553 (1957), the Court held that the State of California could not invalidate a collective bargaining agreement covering employees of a railroad owned by the state.

The principles applied in *Hanson* and *Taylor* obviously apply with equal force to agreements negotiated under the mandate of the National Labor Relations Act. *Local 24, Teamsters v. Oliver*, 358 U.S. 283 (1959). *Oliver* holds that a state antitrust statute cannot be applied to prevent an employer and a union "from carrying out their agreement upon a subject matter as to which federal law directs them to bargain." 358 U.S. at 295.[8] *Oliver*, citing *Hanson*, expressly recognized that "the paramount force of the federal law remains even though it is expressed in the details of a contract federal law empowers the parties to make. . . ." 358 U.S. at 296-297.

[8] The Court of Appeals in its opinion below quotes extensively from the careful discussion in *Oliver* of the nature and extent of federal labor law preemption. See 545 F.2d at 606-7, App. A-16-A-18.

Despite the clear holding of *Oliver*, defendant urges (D.Br. 13) and the District Court adopted the view that *Oliver* was limited to conflicts between federal labor law and state antitrust laws. *Oliver* provided no support for such a position. In any event, subsequent decisions of this Court make it clear that *Oliver* stands for the general proposition that a state cannot modify or invalidate an otherwise valid collective bargaining agreement. In *NLRB v. Insurance Agents*, 361 U.S. 477 (1960), the Court, citing *Oliver*, recognized that "Congress intended that the parties should have wide latitude in their negotiations, unrestricted by any governmental power to regulate the substantive solution of their differences." 361 U.S. at 488.

The vitality and breadth of *Oliver* were again expressly recognized by the Court last term in *Lodge 76, Machinists v. Wisconsin Employment Relations Commission*, 427 U.S. 132 (1976), by the following statement:

> Our decisions since *Briggs-Stratton* have made it abundantly clear that state attempts to influence the substantive terms of collective-bargaining agreements are as inconsistent with the federal regulatory scheme as are such attempts by the NLRB: "Since the federal law operates here, in an area where its authority is paramount, to leave the parties free, the inconsistent application of state law is necessarily outside the power of the State." *Teamsters Union v. Oliver*, 358 U.S. 283, 296 (1959). 427 U.S. at 153.

These decisions of this Court also dispose of defendant's argument that federal labor law and policy protect only the bargaining process and not the bargain resulting therefrom. The agreements between White (and its predecessor) and the union expressly limiting the employer's liability upon termination of the pension plan are part of the bargain on a mandatory bargaining subject and pro-

tected from change by application of the Minnesota Pension Act. Defendant's contention that there is no obligation to bargain on termination of a pension plan or other aspects of a plant closing is contrary to the well established rule that employers must bargain on the impact of plant closings. *Royal Typewriter Co. v. NLRB*, 533 F.2d 1030, at 1039 (8th Cir. 1976).

There are no decisions of this Court in conflict with the decisions cited above. In fact, except for the decision of the District Court in this case, we believe there is no support for the proposition that federal labor law preemption does not protect agreements which are the products of collective bargaining.

2. Congress Did Not by the Welfare and Pension Plans Disclosure Act or by ERISA Cede to the States Authority to Control the Substantive Terms of Collectively Bargained Pension Plans.

There remains for consideration the claim of defendant that Congress, in enacting the Welfare and Pension Plans Disclosure Act, 29 U.S.C. §301 *et seq.* (hereinafter Pension Disclosure Act), ceded to the states the power to control substantive provisions of negotiated pension plans. The District Court so held. The Court of Appeals reversed and expressly held that Congress in passing the Pension Disclosure Act did not intend to regulate substantive provisions of employee benefit plans or to authorize such regulation by the states. 545 F.2d at 608-9, App. A-21-A-24. The Court of Appeals' decision is clearly correct in that neither the language of the Pension Disclosure Act, nor the legislative history of that Act, nor any authority discussing that Act supports the claimed power of a state to modify or invalidate pension provisions of collective bargaining agreements.

When the Pension Disclosure Act was enacted in 1958, Congress, by earlier passage of the Railway Labor Act and the National Labor Relations Act, had preempted state legislation which sought to modify or nullify a collective bargaining agreement negotiated under the umbrella of federal labor laws. The Supreme Court in *Railway Employes' Dept. v. Hanson*, 351 U.S. 225 (1956), made that clear when it expressly held that "a union agreement made pursuant to the Railway Labor Act * * * could not be made illegal or vitiated by any provision of the law of a State" (351 U.S. at 232), and reaffirmed that holding in 1957 in *California v. Taylor*, 353 U.S. 553. The same principle applied to the National Labor Relations Act, as recognized in *Local 24, Teamsters v. Oliver*, 358 U.S. 283 (1959), at 296-97.

In that situation, defendant's claim of freedom from federal labor law preemption can be accepted only if Congress, in enacting the Pension Disclosure Act, can be said to have ceded affirmatively to the states the right to modify or invalidate the pension provisions of a collective bargaining agreement negotiated under the authority of the National Labor Relations Act. There is no support for such a position.

After the Pension Disclosure Act was passed, states of course retained their *pre-existing* right to supervise the operation and administration of pension plans but that right did not include the right to modify or destroy the pension grants and pension obligations set forth in collective bargaining agreements. The plain language of the Pension Disclosure Act clearly demonstrates the limited nature of the power which Congress intended to leave to the states. The very section relied upon by the defendant, Section 309(b), provides as follows:

> The provisions of this chapter . . . shall not be held to exempt or relieve *any person from liability, duty, penalty, or punishment* provided by any present or future law . . . of any State affecting the *operation or administration* of employee . . . pension benefit plans. . . . 29 U.S.C. §309(b). (Emphasis added).

The Court of Appeals correctly held that such language, which permits state laws affecting "the operation or administration" of pension plans, cannot be deemed to authorize modification of the substantive terms of collectively bargained plans.

While the statutory language is clear on its face, the legislative history of the Pension Disclosure Act, as recognized by the Court of Appeals, "emphasizes the limited purpose of this legislation and that the Act's provisions do not affect substantive terms of employee benefit plans." 545 F.2d at 608, App. A-21. The pertinent Senate Report makes it clear that the Pension Disclosure Act is "a disclosure statute" designed "to leave to the States [not cede to the states] the detailed regulations relating to insurance, trusts, and other phases of their [the plans'] operations * * *." S. Rep. No. 1440, 85th Cong. 2d Sess. (1958), 1958 *U.S. Code Cong. and Admin. News* 4137, 4153-54. The relevant House Report said that "the scope of the bill [the Pension Disclosure Act] is limited to disclosure and reporting and does not go into the field of regulation." H. R. Rep. No. 2283, 85th Cong. 2d Sess. (1958), 1958 *U.S. Code Cong. and Admin. News* 4181, 4189.

Congress has demonstrated its capacity to make a clear and explicit grant of regulatory power to the states when it intends to do so. Indeed, the National Labor Relations Act contains many provisions which explicitly sanction state regulation in specific areas. See, for example, sections 10(a), 29 U.S.C. §160(a) (authorizing the National Labor Relations Board to cede jurisdiction to state labor relations agencies), 14(b), 29 U.S.C. §164(b) (authorizing state right-to-work laws), and 14(c)(2), 29

U.S.C. §164(c)(2) (authorizing the National Labor Relations Board to cede certain jurisdiction to states). Pointing to such specific grants of authority, this Court has made it clear that Congressional exceptions to preemption in the areas of labor law must be specific to be effective:

> * * * Congress [has] demonstrated that it knew how to cede jurisdiction to the states. Congress knew full well that its labor legislation 'preempts the field that the act covers insofar as commerce within the meaning of the act is concerned' and demonstrated its ability to spell out with particularity those areas in which it desired state regulation to be operative. *Amalgamated Assoc. v. Wisconsin Employment Relations Bd.*, 340 U.S. 383, 397-98 (1951). (Footnotes omitted).

The Pension Disclosure Act contains no such specific grant of authority to the states. In fact, the Pension Disclosure Act was not designed "to affect the course of collective bargaining relations at all." *Sylvania Electric Products, Inc. v. NLRB,* 358 F.2d 591, 592 (1st Cir., 1966), *cert. denied,* 385 U.S. 852 (1966).

Thacher v. United Construction Workers, 10 N.Y.2d 439, 180 N.E.2d 245 (N.Y., 1962), on which defendant relies (D.Br. 20), does not require a contrary conclusion, for the court there expressly recognized, contrary to defendant's contention, that under *Oliver* "no State statute could be applied to prevent the carrying out of the collective bargaining agreement." 180 N.E.2d, at 247.

Defendant suggests that the enactment by Congress, on September 2, 1974, of the Employee Retirement Income Security Act (ERISA), 29 U.S.C. §1,001, et seq., somehow proves that Congress had earlier ceded to the states authority to control substantive terms of collectively bargained pension plans. Defendant pressed the same argument before the District Court and the Court of Appeals

without success. ERISA was passed and became effective *after* the Minnesota Pension Act and *after* the termination of the Plan. It is impossible to see how a decision by Congress to enact pension legislation can, in itself, be said to sanction similar state legislation in an area which Congress has otherwise preempted. State legislation is preempted even where it covers the same subject as a federal statute. Thus, in *Connell Construction Co. v. Plumbers & Steamfitters,* 421 U.S. 616 (1975), *rehearing denied,* 423 U.S. 884, this Court held that a state antitrust law was preempted by federal labor law even though the state law prohibited conduct which was also illegal under federal antitrust law. 421 U.S. at 635-36.

Nor can Congress' deferral of the date when ERISA preempted state legislation be considered as recognizing the right of states to enact pension legislation which otherwise conflicts with federal labor law and policy. The ERISA provision in question merely postpones the preemptive effect of ERISA itself until January 1, 1975, thereby preserving valid pre-1975 state-created claims. It does not, and cannot, in bootstrap fashion, validate statutes whose application is barred for reasons independent of ERISA, in this case the preemptive effect of federal labor law.

As previously noted, *supra*, p. 14, federal labor law preemption requires a very specific expression of Congressional intent to permit state regulation in this area.

If a state could enforce statutes modifying or abrogating negotiated pension plans, the balance established by Congress in respect of labor matters would be upset.[9] If that were to happen, then, as noted by the Court of Appeals, a different state legislature in another day could take away employee benefits obtained through good faith collective bargaining. 545 F.2d at 610, App. A-24.

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[9] See Cox, *Labor Law Preemption Revisited,* 85 Harv. L. Rev. 1337, 1352 (1972).

CONCLUSION

The decision below is obviously correct under principles repeatedly announced and applied by this Court. There is no conflict of decision. It is thus clear that there is involved in this cause no substantial question not previously decided by this Court.

We respectfully submit that the Court should dismiss this appeal or, in the alternative, affirm the judgment entered in the cause by the United States Court of Appeals for the Eighth Circuit.

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No. 76-1184

In the Supreme Court of the United States

OCTOBER TERM, 1977

E.I. MALONE, COMMISSIONER OF LABOR AND INDUSTRY FOR MINNESOTA, APPELLANT

v.

WHITE MOTOR CORPORATION AND WHITE FARM EQUIPMENT COMPANY

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

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MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

This memorandum is submitted pursuant to the Court's order of April 18, 1977, inviting the Solicitor General to express the views of the United States in this case.

QUESTION PRESENTED

Whether the National Labor Relations Act preempts a Minnesota statute requiring an employer, upon termination of a pension plan, to pay certain benefits, when such benefits are in excess of those specified in the collective bargaining agreement.

STATEMENT

1. The Minneapolis-Moline Company, a farm implement manufacturer, operated plants in Minneapolis and Hopkins, Minnesota, for many years. Beginning in 1955, it

had collective bargaining agreements with the United Auto Workers covering production and maintenance employees. Such agreements provided for an employee pension plan (J.S. App. A-27).[1] In January 1963, White Motor Corporation purchased the assets of Minneapolis-Moline Company and succeeded to the latter's bargaining obligation to the Union and to its obligations under the pension plan (*ibid.*).[2]

The 1971 version of the plan,[3] which is pertinent to this case, provided that covered employees with ten years of credited service were entitled to a specified schedule of benefits upon retirement at or after age 65 (Section 6.01). Additionally, the plan provided that employees with ten years of credited service who terminated employment after the age of 40 would be entitled to draw benefits upon reaching age 65 (Section 6.03). See J.A. A-122 to A-125, A-126.

The 1971 plan contained a provision, first inserted in the 1968 plan, requiring that unpaid past service liability[4] be amortized, *i.e.*, funded, over a 35-year period (Section 9.05) (J.S. App. A-28).

The plan also contained the following provisions:

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[1] "J.S. App." refers to the appendix to the Jurisdictional Statement. "J.A." refers to the joint appendix to the briefs in the court below.

[2] White Motor Corporation operated the plants through its subsidiary, White Farm Equipment Company. Both are referred to herein as "the Company."

[3] Relevant provisions of the plan are set out at J.A. A-122 to A-147.

[4] "Unpaid past service liability" is the excess of the accrued liability of the pension fund over the present value of the fund's assets. In a continuing plan, such liability is normally covered by the employer's contributions on behalf of present employees.

Section 6.09—Source of Pensions

Pensions shall be payable only from the Fund and rights to pensions shall be enforceable only against the Fund.

* * * * *

Section 6.17—No Other Benefits

No benefits other than those specifically provided for are to be provided under this Plan. No employee shall have any vested right under the Plan prior to his retirement and then only to the extent specifically provided herein.

* * * * *

Section 9.04—Rights of Employees in the Fund

No employees, participant or pensioner shall have any right to, or interest in, any part of any Trust Fund created hereunder, upon termination of employment or otherwise, except as provided under this Plan and only to the extent therein provided. All payments of benefits as provided for in this Plan shall be made only out of the Fund or Funds of the Plan and neither the Company nor any Trustee nor any Pension Committee or Member thereof shall be liable therefor in any manner or to any extent. [J.S. App. A-28 to A-29.]

Notwithstanding these provisions, the Company agreed, in separate letters of understanding, to pay benefits amounting to $7,000,000 above the assets of the fund (J.S. App. A-29; J.A. A-148 to A-150).

2. On June 30, 1972, the Company closed the Lake Street plant in Minneapolis, and attempted to terminate the pension plan.[5] However, the Union secured an arbitration award requiring the Company to continue the plan in effect until the expiration of the collective bargaining agreement on May 1, 1974, to pay benefits pursuant to the terms of the plan until the assets of the fund were exhausted, and then to pay benefits in accordance with the terms of the guarantee letters (J.S. App. A-30).[6]

Prior to the termination of the plan,[7] the Minnesota Legislature enacted the Private Pension Benefits Protection Act[8] ("Minnesota Pension Act"), which became effective on April 10, 1974. The Minnesota Pension Act imposes certain obligations on an employer who ceases to operate a place of employment or who terminates a pension plan. As described by the district court, the statute operates as follows (J.S. App. A-31 to A-32):

> Minn. Stat. Ann. §§181B.03-.06 impose a "pension funding charge" directly against any employer who ceases to operate a place of employment or a pension plan. Such charge shall be equal in amount to the statutory provisions. These sections essentially provide that any employee who has completed ten or more years of credited service under a pension plan has, upon termination of that plan or of his place of employment, an automatically vested right to all pension benefits he would have received had the particular plan not been terminated or had the place of business not been closed.
>
> Minn. Stat. Ann. §§181B.09-.12 provide that the Commissioner of Labor and Industry, after investigation, shall certify amounts owing by an employer. That certified amount is declared, under §181B.11, to "be a lien upon the employer's assets." The pension funding charge is used to purchase an annuity payable to the employee when he reaches normal retirement age.

Pursuant to the statute, appellant Malone notified the Company that it owed a pension funding charge of $19,150,053 (J.S. App. A-31; J.A. A-151 to A-154).

3. The Company filed suit in the district court for declaratory and injunctive relief alleging, *inter alia*, that the Minnesota Pension Act interfered with the process of collective bargaining sanctioned by the National Labor Relations Act and therefore was preempted by that Act.

The district court denied the Company's motion for summary judgment and a preliminary injunction (J.S. App. A-47 to A-48). In that court's view, the Minnesota Pension Act did not conflict with the National Labor Relations Act because the Minnesota Act did not " 'regulate conduct so plainly within the central aim of federal regulation involv[ing] too great a danger of conflict between power asserted by Congress and requirements imposed by state law . . .' [*San Diego Building Trades Council* v.] *Garmon* * * *." J.S. App. A-40. Moreover, the district court found

[5] The Minneapolis plant employed about 800 workers covered by the pension plan. The Hopkins plant remained open and continues to operate under a new pension plan. J.S. App. A-3 n. 5.

[6] *White Motor Corp. and U.A.W.*, 61 Lab. Arb. 320, 328, 331. The award was upheld in *International Union, etc.* v. *White Motor Corp.*, 505 F. 2d 1193 (C.A. 8), certiorari denied, 421 U.S. 921.

[7] The Company terminated the plan on May 1, 1974, and paid the regular benefits until March 1976, when the benefits were then diminished to the levels set out in the guarantee letters (J.S. App. A-30; J.S. 5).

[8] Minn. Stat. Ann. §§181B.01-181B.17 (Cum. Supp. 1976).

that Congress, in enacting the Welfare and Pension Plans Disclosure Act of 1958, 72 Stat. 997 ("Disclosure Act"),[9] contemplated that the regulation of pension plans would be left to the states (J.S. App. A-44). Finally, the district court rejected the Company's contention that *Local 24, Teamsters Union* v. *Oliver*, 358 U.S. 283 (discussed *infra*, pp. 13-14), was controlling. The district court concluded that the "inherent conflict and delicate balance which exists between labor and antitrust policy does not exist between labor policy and the regulation of pensions. Congress, in formulating its policies, has indicated that states may regulate pensions." (J.S. App. A-46.)

2. The court of appeals reversed (J.S. App. A-1 to A-25). It first noted (J.S. App. A-8):

> The Minnesota Pension Act obligations conflict with White Motor's pension plan provisions in the following respects: (1) the Act grants employees vested rights to pension benefits which are not available under the pension plan; (2) to the extent of any deficiency in the pension fund, the Act requires satisfaction of pension benefits from the general assets of the employer, while the pension plan provides that benefits shall be paid only out of the pension fund; (3) the Act does not permit employers to escape liability for funding of pension rights, but the pension plan permits White Motor to terminate the plan at any time, and in so doing end any liability for future payments to the pension fund, save those specifically guaranteed. Thus, essential features of the pension plan, deferred funding of past service liability coupled with limited employer liability and the power to terminate, were negated by the Pension Act. [Footnote omitted.]

[9] See note 10, *infra*.

The court of appeals stated, "The Minnesota Pension Act directly intrudes upon the employer's substantive obligations under the pension plan, obligations arrived at freely through collective bargaining * * *" (J.S. App. A-11). Relying particularly on *Lodge 76, Machinists* v. *Wisconsin Employment Relations Commission*, 427 U.S. 132, and *Local 24, Teamsters Union* v. *Oliver*, *supra*, the court concluded, "* * * a state cannot modify or change an otherwise valid and effective provision of a collective bargaining agreement" (J.S. App. A-20).

The court of appeals further held that the Disclosure Act did not require a contrary conclusion, since "the Act's provisions [d]o not affect substantive terms of employee benefit plans" (J.S. App. A-21). The court added (J.S. App. A-23):

> Clearly, the preemption disclaimer provision of the Disclosure Act, §309(b), relates to state statutes governing those obligations of trust undertaken by persons managing, administrating, or operating employee benefit funds, the violation of which gives rise to civil and criminal penalties. Accordingly, no warrant exists for construing this legislation to leave to a state the power to change substantive terms of pension plan agreements.

DISCUSSION

1. It is axiomatic that Congress has not entirely preempted the states from regulating labor matters. The National Labor Relations Act "leaves much to the states, though Congress has refrained from telling us how

much. We must spell out from conflicting indications of congressional will the area in which state action is still permissible." *Garner* v. *Teamsters Union*, 346 U.S. 485, 488. While Congress has adopted a national policy for the governance of labor-management relations, that policy is not intended to preclude the states from the exercise of their police powers. Indeed, the first case decided by this Court on the subject of preemption under the NLRA adopted the principle, already well-established in other fields of the law, that "an 'intention of Congress to exclude States from exerting their police power must be clearly manifested,' " and the Court found no such intent in the NLRA. *Allen-Bradley Local* v. *Wisconsin Board*, 315 U.S. 740, 749. That principle has not been weakened in thirty-five years of adjudication under the Act. See *Auto Workers* v. *Wisconsin Board*, 351 U.S. 266, 274-275. The exercise of the police power is still "most clearly a matter for the States," *Lodge 76, Machinists* v. *Wisconsin Employment Relations Commission*, 427 U.S. 132, 136 and cases cited at n. 2.

The Minnesota Act at issue here is a proper exercise of the state's police power, for "[s]tates possess broad authority under their police power to regulate the employment relationship to protect workers within the State. Child labor laws, minimum and other wage laws, laws affecting occupational health and safety, and workmen's compensation laws are only a few examples." *De Canas* v. *Bica*, 424 U.S. 351, 356. No less than minimum wage laws or workmen's compensation, laws protecting pension benefits "regulate the employment relationship" to provide workers within the state with an assurance of economic security and to prevent their becoming a welfare burden to the state. It is no less true now than it was in 1917, when this Court upheld the constitutionality of state

workmen's compensation acts, that "a State, in the exercise of its power to pass such legislation as reasonably is deemed to be necessary to promote the health, safety and general welfare of its people * * * may require that these human losses shall be charged against the industry * * *." *Mountain Timber Co.* v. *Washington*, 243 U.S. 219, 243. And the court's observation in a related workmen's compensation case is equally applicable to the Minnesota Act here: "It is plain that, on grounds of natural justice, it is not unreasonable for the State * * * to require [the employer] to contribute a reasonable amount, and according to a reasonable and definite scale, by way of compensation for the loss of earning power incurred in the common enterprise * * * instead of leaving the entire loss to rest where it may chance to fall—that is, upon the injured employee or his dependents." *New York Central R. R. Co.* v. *White*, 243 U.S. 188, 203-204.

Thus, Minnesota's Act, designed to protect workers from the severe effects of the precipitous loss of their pensions, is "certainly within the mainstream of such police power regulation," *De Canas* v. *Bica*, *supra*, 424 U.S. at 356, and the NLRA therefore does not "leave [the states] powerless" to act in this area. *Auto Workers* v. *Wisconsin Board*, *supra*, 351 U.S. at 274-275. In our view, the court of appeals erred in failing to follow this well-established exception to the preemption doctrine.

2. Further proof that Congress intended that matters of pension regulation be left to the states is found in the Disclosure Act of 1958, which was in effect at the time the Minnesota Act was passed.[10] The Disclosure Act

[10] The Disclosure Act has since been superseded and repealed by the more comprehensive Employment Retirement Income Security Act of 1974, 29 U.S.C. (Supp. V) 1001 *et seq.* (ERISA). See 29 U.S.C. (Supp. V) 1031. The Minnesota Act has been preempted by ERISA (see p. 14, *infra*), which provides for preemption of "any and all State laws

"provide[d] for registration, reporting, and disclosure of the financial operations of all types of private employee welfare and pension benefit plans. It [was] designed to place the primary responsibility for the policing and improved operations of these plans upon the participants themselves, with a minimum of interference in the natural development and operation of such plans, *to leave to the States the detailed regulations relating to insurance, trusts, and other phases of their operations,* and to place the least possible burden by way of cost and otherwise upon the plans and upon the Federal Government. * * *[11]

Congress thus intended to leave to the states the responsibility for regulating pension plans as Minnesota has done here. Indeed, Congress specifically provided that the Disclosure Act did not "exempt or relieve any person from any liability * * * provided by any present or future

insofar as they may now or hereafter relate to any [covered] employee benefit plan." Section 514, 29 U.S.C. (Supp. V) 1144. The preemption section, however, did not take effect until January 1, 1975, and Section 514(b)(1) provides that the section "shall not apply with respect to any cause of action which arose, or any act or omission which occurred before, January 1, 1975." The present controversy is therefore not moot since ERISA was not in effect at the time the Company terminated its pension plan. See *Fleck* v. *Spannaus*, 251 N.W. 2d 334 (Minn. Sup. Ct.). Because the present appeal arises out of the Company's motion for summary judgment, the Company does not dispute the fact that, but for the asserted preemption by the NLRA, the Minnesota Act applies to the terminations involved here.

[11]S.Rep. No. 1440, 85th Cong., 2d Sess. 19 (1958) (emphasis added).

See also remarks of Senator Douglas, 104 Cong. Rec. 7061 (1958); remarks of Rep. Santangelo, 104 Cong. Rec. 16434 (1958).

law * * * of any State affecting the operation or administration" of pension plans.[12] Section 10(b), 72 Stat. 1003. And the legislative history explicitly disclaims any possibility that the Disclosure Act would intrude on state regulation (S. Rep. No. 1440, *supra,* at 18) (emphasis added):

> There is no desire to get the Federal Government involved in the regulation of these plans but a disclosure statute which is administered in close cooperation with the States could also be of great assistance to the States in carrying out their regulatory functions.
>
> * * * * *
>
> [T]he legislation proposed is not a regulatory statute. *It is a disclosure statute and by design endeavors to leave regulatory responsibility to the States.* A Federal disclosure statute, if properly coordinated with the States, as the bill provides, could eliminate all but one disclosure report and leave insurance, trusts, and other detailed regulations to the States.

The legislative history also makes clear that Congress was concerned about the specific problem Minnesota has remedied here, namely, the loss of employee benefits because of inadequate vesting and funding provisions. A federal disclosure law was believed appropriate to help expose abuses so that remedial action of this nature could be taken by the states. S. Rep. No. 1440, *supra,* at 4, 15.

[12]The court of appeals distinguished this section of the Disclosure Act by holding that it "[c]learly * * *relates to state statutes governing those obligations of trust undertaken by persons managing, administrating or operating employee benefit funds, the violation of which gives rise to civil and criminal penalties. Accordingly, no warrant exists for construing this legislation to leave to a state the power to change substantive terms of pension plan agreements" (J.S. App. A-23). Such a narrow reading of this section is contradicted by the plain words of the statute. The Minnesota Act on its face is one "affecting

Moreover, when it enacted ERISA in 1974, Congress adopted a broad preemption provision, n. 10, *supra*, which further indicates that it was aware of the regulatory role which the states had played at the time the Minnesota Act was adopted. In explaining the Conference Report to the Senate, Senator Javits, one of the managers of the Senate bill, expressly noted that state termination insurance plans would thenceforth be preempted.[13]

The court of appeals erred in rejecting the district court's reliance on this unambiguous expression of congressional intent (J.S. App. A-20 to A-23). Had Congress, by enacting the NLRA, preempted the states from regulating collectively bargained pension plans, its subsequent declarations in passing the Disclosure Act that states were free to regulate such plans would make no sense. As previously

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the operation or administration" of pension plans, and the Company is a "person" (see Section 3, 72 Stat. 997) with a $19 million "liability * * * provided by" the Minnesota Act. Furthermore, if the Disclosure Act did not "leave to a state the power to change substantive terms of pension plan agreements," as the court of appeals concluded, then it must have taken such power away from the states. See pp. 7-9, *supra*. Not only is the statute bare of any such preemption, express or implied, but Section 10(b) and the legislative history quoted in the text convincingly establish Congress' intent not to do so. Finally, the Senate report states simply that Section 10(b) "is the usual provision with respect to the effect of other laws." S. Rep. No. 1440, *supra*, at 33. This statement casts serious doubt on the court of appeals' conclusion that the section is limited to preserving only state statutes providing penalties for mismanagement.

[13]Senator Javits stated (120 Cong. Rec. 29942 (1974): "In view of Federal preemption, State laws * * * establishing State termination insurance programs, et cetera, will be superseded." Representative Dent, a manager of the bill in the House, in presenting the conference report to his colleagues, stated that the broad preemption provision "eliminat[ed] the threat of conflicting and inconsistent State and local regulation." 120 Cong. Rec. 29197 (1974).

noted, Congress will be presumed to have preempted the states' police power only where it has "clearly manifested" its intent to do so (*Allen-Bradley Local*, *supra*). Here, not only is any indication of such intent absent, but the history of the Disclosure Act clearly manifested an intent *not* to preempt the states from regulation.

3. Against this convincing evidence that Congress intended to preserve the power of the states to regulate pension plans, the court of appeals erred in relying on *Local 24, Teamsters Union* v. *Oliver*, 358 U.S. 283. In that case, this Court held that the NLRA barred the state from invalidating, under its antitrust laws, a minimum rental provision in a collective bargaining agreement between motor carriers and the union representing their drivers, which provision applied when a carrier leased a truck from an owner-driver. The Court concluded that the minimum rental provision was a form of wages, and, since the NLRA imposed a duty on the carriers to bargain with the union concerning wages, application of state antitrust laws "would frustrate the parties' solution of a problem which Congress has required them to negotiate in good faith toward solving, and in the solution of which it imposed no limitations relevant here." *Id.* at 296. However, the Court emphasized that "we have not here a case of a collective bargaining agreement in conflict with a local health or safety regulation." *Id.* at 297.

The court of appeals disregarded this Court's *caveat* and the history from which it was drawn. Its failure to do so was critical because, as we have shown, the NLRA does not preempt the states from legislating under their power to protect the health, safety and welfare of their citizens, as Minnesota has done here. The fact that pensions are "conditions of employment" and thus subject to bargaining, *Inland Steel Co.* v. *National Labor*

Relations Board, 170 F. 2d 247 (C.A. 7), certiorari denied, 336 U.S. 960, is not conclusive. Had Minnesota enacted a statute forbidding the knowing employment of illegal aliens, for example, the Company could not successfully argue that such a statute must yield under *Oliver* to a collectively bargained agreement which provided for the employment of such aliens or which specified the wages to be paid them. Cf. *De Canas* v. *Bica, supra*. The situation is no different here.

5. As noted, *supra*, n. 10, ERISA has preempted the Minnesota Pension Act as to causes of action which occur after January 1, 1975. Thus, although resolution of this dispute is important to the parties, the precise problem of whether state pension-regulation statutes are preempted by the NLRA is unlikely to arise again.

However, the decision of the court of appeals has implications beyond this problem. It casts serious doubt on the states' ability to exercise fully their power to enact measures to protect the public health and welfare. It does so by preventing enforcement of such laws in those situations where they conflict with the terms of a collectively bargained agreement, solely because they do so conflict. The court has thus adopted a rule of decision that would allow employers and employees to ignore state laws where it suits their mutual interest to do so or where one party feels it has no choice but to accede to the superior bargaining position of the other. Such deflation of the state's police power should not be countenanced in the name of federal labor policy without the clearest command from Congress. There is no such command here.

CONCLUSION

Probable jurisdiction should be noted.

Respectfully submitted.

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AUGUST 1977.

DOJ-1977-08

In the Supreme Court of the United States

October Term, 1977

No. 76-1184

E. I. MALONE, Commissioner of Labor and Industry for the State of Minnesota,
Appellant,

vs.

WHITE MOTOR CORPORATION and WHITE FARM EQUIPMENT COMPANY,
Appellees.

On Appeal From the United States Court of Appeals for the Eighth Circuit

RESPONSE OF APPELLEES TO MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

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In the Supreme Court of the United States

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ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

RESPONSE OF APPELLEES TO MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

This memorandum is submitted in response to the memorandum of the Solicitor General filed with this Court on August 24, 1977 following the Court's order of April 18, 1977 inviting the Solicitor General to express the views of the United States in this case.

QUESTIONS DISCUSSED IN THIS MEMORANDUM

The sole purpose of this memorandum is to reply briefly to the positions urged by the Solicitor General in support of his recommendation that probable jurisdiction be noted in this matter. The Solicitor General argues that the Minnesota Pension Act is not preempted because

(1) The Act is excepted from preemption as an ex-

ercise of the state's police power (Solicitor General's Memorandum 8), or as a local health and safety regulation, (Solicitor General's Memorandum 13), and

(2) Congress in enacting The Welfare and Pension Plans Disclosure Act of 1958, 29 U.S.C. §301, ("Disclosure Act") left to the states authority to change the substantive provisions of collectively bargained pension plans. (Solicitor General's Memorandum 9).

ARGUMENT

1. The Minnesota Pension Act Is Not Exempt From Federal Labor Law Preemption

The Solicitor General in his memorandum argues that state legislation enacted under a state's police power is excepted from the preemptive effect of federal labor law. He states that federal labor policy "is not intended to preclude the states from the exercise of their police powers" and that states are free to "regulate the employment relationship" irrespective of agreements reached through the federally sanctioned process of collective bargaining (Solicitor General's Memorandum 8). The Solicitor General's position is clearly an incorrect statement of the status of labor law preemption.

The Solicitor General relies upon two 1916 cases upholding the constitutionality of state workmen's compensation laws (Solicitor General's Memorandum 8-9). The issue now before the Court, however, is one of federal labor law preemption. A state law which is in conflict with federal labor law or policy is preempted. Where such a conflict with federal law exists, the police power of the state ceases. This principle has long been recognized by this Court.

In *Erie R.R. Co. v. New York*, 233 U.S. 671 (1914), the Court held that a New York statute setting lower maximum hours of work for railroad telegraph operators than the maximum hours permitted by the federal Hours of Service Act, being in conflict with federal law, could not be upheld as an exercise of the state's police power. The Court said:

> "We considered it elementary that the police power of a state could only exist from the silence of Congress upon the subject and ceased when Congress acted or manifested its purpose to call into play its exclusive power." (233 U.S. at 682)

In *Railway Employes' Dept. v. Hanson*, 351 U.S. 225 (1956), a leading case on labor law preemption, the Court expressly held that the police power of the state to prohibit a union shop or closed shop existed only in the absence of conflicting federal legislation and that the Railway Labor Act wiped out that police power (351 U.S. at 233).[1]

The Court in *California v. Taylor*, 353 U.S. 553 (1957), made it clear that the right of a state to regulate employment relationships is subject to labor law preemption. In that case, the state of California argued that "Congress has no constitutional power to interfere with the 'sovereign right' of a State to control its employment relationships on a state-owned railroad engaged in interstate commerce." (353 U.S. at 568). This Court held that such a state right could not stand against conflicting provisions of the Railway Labor Act.

The decision of this Court in *De Canas v. Bica*, 424 U.S. 351 (1976), to which the Solicitor General refers, did

[1]See also *Long Island R. Co. v. Dept. of Labor*, 256 N.Y. 498, 177 N.E. 17, 23-24 (1931).

not involve labor law preemption,[2] and in no way changed that doctrine under which states cannot interfere with the substantive provisions of collective bargaining agreements. That *De Canas* did not affect labor law preemption is shown by the fact that later in the same term this Court decided *Lodge 76, Machinists v. Wisconsin Employment Relations Commission*, 427 U.S. 132 (1976), a major labor law preemption case, without even citing *De Canas*. In fact, *Machinists* expressly reaffirmed *Local 24, Teamsters v. Oliver*, 358 U.S. 283 (1959), the case upon which the Eighth Circuit's opinion is based.

References to state minimum wage, maximum hour and child labor laws do not support the Solicitor General's position. Section 18(a) of the Fair Labor Standards Act, 29 U.S.C. §218(a), expressly grants to states and municipalities the right to promulgate and enforce laws establishing higher minimum wages, lower maximum workweeks and higher child labor standards than those established under the Fair Labor Standards Act. In the absence of such a grant, as clearly established from the authorities cited above, a state statute controlling wages, hours or working conditions in conflict with a collective bargaining agreement negotiated under the mandate of federal labor law is preempted.

What this Court has recognized is a narrow exception to the preemption doctrine for "local health or safety regulation." In *Local 24, Teamsters v. Oliver*, 358 U.S. 283 (1959), this Court, in holding that states could not

[2] *De Canas* involved a claim that a California statute regulating the employment of illegal aliens was preempted by the Immigration and Nationality Act, 8 U.S.C. §1101 (INA). Two comments will serve to distinguish the case. (1) The Court recognized (424 U.S. at 359, n.7) that nothing remotely resembling the NLRA scheme of regulation was to be found in the INA. (2) The Court noted (424 U.S. at 361-2) that federal legislation had expressly approved state legislation regulating employment of illegal aliens.

interfere with the substantive terms of agreements established by collective bargaining under the mandate of the National Labor Relations Act, recognized that it did not have before it "a case of a collective bargaining agreement in conflict with a local health or safety regulation." (358 U.S., at 297).

The scope of this exception, discussed in detail in *Lodge 76, Machinists v. Wisconsin Employment Relations Commission*, 427 U.S. 132, 136-37 (1976), is limited to local regulation of picket line violence, coercion, destruction of property or other such conduct which involves interests "deeply rooted in local feeling and responsibility." *San Diego Unions v. Garmon*, 359 U.S. 236, 244 (1959). It does not include the type of regulation attempted in the Minnesota Pension Act.

Even when the Solicitor General addresses, in a subsequent section of his discussion, the limited exception referred to in *Oliver*, he does not state the law correctly. The Solicitor General without explanation defines the exception as a "health, safety *and welfare*" exception (Solicitor General's Memorandum 13). This gratuitous expansion of the exception is, of course, an attempt to support a claim that the health and safety exception is applicable to legislation dealing with "economic welfare" of citizens of a state.[3]

Pensions have been held to be both "wages" and "other conditions of employment" as those terms are defined in the National Labor Relations Act. *Inland Steel Company v. NLRB*, 170 F.2d 247 (7th Cir. 1948), *cert. denied*, 336 U.S. 960 (1949). It is common knowledge that wage increases may be granted in lieu of an increase

[3] The argument that the health and safety exception applies to legislation affecting "economic welfare" was urged by appellant both in the District Court and the Court of Appeals for the 8th Circuit, and was rejected by both courts. That argument was not advanced again in the Jurisdictional Statement.

in fringe benefits such as pensions, paid vacations, and paid holidays, or a fringe benefit may be given in lieu of another fringe benefit or of a larger wage increase. Clearly wages, pensions, vacation pay, holiday pay and numerous other provisions of collective bargaining agreements are all part of the economic package negotiated in such an agreement and, of course, like all elements of that package, have an effect on the economic welfare of employees or retirees. See *Craig v. Bemis Company, Inc.*, 517 F.2d 677, 684 (5th Cir. 1975). If the health and safety exception to preemption were considered broad enough to include an employee's economic welfare, virtually the whole range of mandatory subjects for collective bargaining would be subject to state interference and control. The exception would then engulf the rule.

If legislation affecting economic welfare of individuals were exempt from federal labor law preemption, this Court in *Local 24, Teamsters v. Oliver*, 358 U.S. 283 (1959), would have held state antitrust laws, which materially affect the economic welfare of citizens, exempt from federal labor law preemption.

The cases cited earlier in this memorandum make it clear that a state statute establishing wages in conflict with a collective bargaining agreement negotiated under the mandate of federal law is preempted. See also *United Air Lines Inc. v. Industrial Welfare Commission*, 211 Cal. App. 2d 729, 28 Cal. Reptr. 238 (1963), reviewing in detail the authorities on the subject and holding that state regulation of wages and fringe benefits is not exempt from labor law preemption as a health and safety regulation.

The attempt of the Solicitor General to treat the Minnesota Pension Act as a health or safety regulation is unsupported by any authority and is completely at odds with the well established doctrine of federal labor law preemption.

2. The Disclosure Act Does Not Support Appellant's Position

The Solicitor General argues (Solicitor General's Memorandum 9-13) that Congress in the Disclosure Act left to the states the power to change substantive terms of negotiated pension plans.

This argument has been dealt with and answered in Appellees' Motion to Dismiss or Affirm (pp. 11-15), but further comment is made here in view of the Solicitor General's reliance upon an incorrect premise.

The Solicitor General does not argue that the Disclosure Act ceded to the states the power to change substantive terms of negotiated pension plans, since "the scope of the bill [the Disclosure Act] is limited to disclosure and reporting and does not go into the field of regulation". H.R. Rep. No. 2283, 85th Cong. 2d Sess. (1958), 1958 U.S. Code Cong. and Admin. News 4181, 4189.

The Solicitor General does argue that if the Disclosure Act did not leave to the states the power to change substantive terms of pension agreements, "then it must have taken such power away from the states." (Solicitor General's Memorandum 11-12, n.12.) It is thus the position of the Solicitor General that, prior to passage of the Disclosure Act, states had the power to change substantive terms of collectively bargained pension plans. This premise is incorrect and the Solicitor General's argument must fail.

The Disclosure Act became law in 1958. At that time both the Railway Labor Act and the National Labor Relations Act had been in effect for many years. Prior to enactment of the Disclosure Act, this Court had clearly enunciated the doctrine of labor law preemption under which a collective bargaining agreement made pursuant to the mandate of federal labor law could not be altered

by state law. *Railway Employes' Dept. v. Hanson,* 351 U.S. 225 (1956); *California v. Taylor,* 353 U.S. 553 (1957). *Local 24, Teamsters v. Oliver,* 358 U.S. 283 (1959), simply applied to the National Labor Relations Act the labor law preemption doctrine enunciated in *Hanson,* and the Court expressly relied upon *Hanson* for its holding. 358 U.S. at 296-297.

Consequently, when the Disclosure Act was enacted, states did not have the power to change substantive terms of collective bargaining agreements, and the Disclosure Act did not cede power to the states. The Disclosure Act did, of course, leave to the states "the detailed regulations relating to insurance, trusts and other phases of their operations" (S. Rep. No. 1440, 85 Cong. 2d Sess. 19 (1958), 1958 U.S. Code Cong. and Admin. News 4137, 4153-4), but that regulatory responsibility, in the face of the well established doctrine of federal labor law preemption, did not include the right to interfere with the substantive terms of collective bargaining agreements.

CONCLUSION

Collective bargaining is the cornerstone of the national labor policy.[4] It is the teaching of this Court in *Local 24, Teamsters v. Oliver,* 358 U.S. 283 (1959), that "the goal of federal labor policy . . . is the promotion of collective bargaining," 358 U.S. at 295, and that a state statute may not "frustrate the parties' solution of a problem which Congress has required them to negotiate in good faith towards solving . . ." 358 U.S. at 296. These principles were expressly reaffirmed by this Court less than a year and a half ago in *Lodge 76, Machinists v. Wisconsin Employment Relations Commission,* 427 U.S. 132 (1976).

[4] By express provision of the National Labor Relations Act, "[i]t is declared to be the policy of the United States to . . . (encourage) the practice and procedure of collective bargaining . . ." 29 U.S.C. §151.

The Solicitor General argues that the states may exercise their "police power" to " 'regulate the employment relationship' to provide workers within the states with an assurance of economic security . . ." However valid such legislation might be otherwise such legislation cannot be applied in a collective bargaining setting without destroying the very fabric of collective bargaining itself. The argument advanced by the Solicitor General is totally at odds with the principles of *Oliver.* That argument cannot be accepted unless this Court is prepared to overrule *Oliver.*

As noted by the Solicitor General, the issue before the Court is one which will not arise again (Solicitor General's Memorandum 9 n.10, 14). The Employee Retirement Income Security Act of 1974 (ERISA) has preempted state laws relating to "any [covered] employee benefit plan." 29 U.S.C. §1144. The Minnesota Pension Act has become obsolete. Under these circumstances, and because the Court of Appeals correctly reflects the teaching of *Oliver,* this Court should dismiss this appeal or, in the alternative, affirm the judgment of the United States Court of Appeals for the Eighth Circuit.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 76-1184

E. I. MALONE, Commissioner of Labor and Industry for the State of Minnesota,

Appellant,

vs.

WHITE MOTOR CORPORATION and WHITE FARM EQUIPMENT COMPANY,

Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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IN THE

Supreme Court of the United States

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No. 76-1184

E. I. MALONE, Commissioner of Labor and Industry for the State of Minnesota,
Appellant,

vs.

WHITE MOTOR CORPORATION and WHITE FARM EQUIPMENT COMPANY,
Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF OF APPELLANT

Appellant appeals from the judgment of the United States Court of Appeals for the Eighth Circuit entered on December 2, 1976, reversing the judgment of the United States District Court for the District of Minnesota and ruling that the National Labor Relations Act preempts the Minnesota Private Pension Benefits Protection Act, Minn. Stat. §§ 181B.01-.17 (1976). Appellant submits this brief in support of its position that the judgment of the court of appeals was incorrect and should be reversed.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eighth Circuit is reported at 545 F.2d 599 (1976), and the opinion of the United States District Court for the District of Minnesota is reported at 412 F. Supp. 372 (1976). Both opinions are reproduced in full in the Appendix herein at A-109 and A-88 respectively.

JURISDICTION

The action leading to this appeal was initiated by appellees in the United States District Court for the District of Minnesota pursuant to 28 U.S.C. §§ 1331, 1332 and 2201-2202 for a declaratory judgment that, *inter alia*, the Minnesota Private Pension Benefits Protection Act, Minn. Stat. §§ 181B.01-17 (1976) is preempted by the National Labor Relations Act, 29 U.S.C. § 151 *et seq.*

Appellees, relying solely on the preemption issue, also moved for a preliminary injunction and on March 18, 1976, the district court entered an order ruling that the Minnesota Pension Act was not preempted by the NLRA and denying appellee's motion for a preliminary injunction. On December 2, 1976, the United States Court of Appeals for the Eighth Circuit reversed the district court and ruled that the Minnesota Pension Act was preempted by the National Labor Relations Act. A notice of appeal to this Court was filed on December 7, 1976, with the Eighth Circuit Court of Appeals. The jurisdiction of this Court to review the decision of the court of appeals is conferred by 28 U.S.C. § 1254(2). This Court noted probable jurisdiction of the appeal on October 3, 1977.

QUESTION PRESENTED

The Minnesota Pension Act protects Minnesota workers from the forfeiture of their accrued pension benefits when a plant is closed or a private pension plan is terminated. The question presented is whether the court of appeals erred in reversing the district court and ruling that the Minnesota Pension Act was preempted by the National Labor Relations Act.

STATUTE INVOLVED

The full text of the Minnesota Pension Act, Minn. Stat. §§ 181B.01-17 (1976) is set forth in the Appendix at A-132.

STATEMENT OF THE CASE

I. PROCEDURAL BACKGROUND.

The action leading to the instant appeal was commenced in May, 1975, in the United States District Court for the District of Minnesota. Appellees White Motor Corporation and White Farm Equipment Company (hereinafter "White Motor") sued appellant E. I. Malone, Commissioner of Labor and Industry of the State of Minnesota (hereinafter the "State"), seeking a declaratory judgment that the Minnesota Private Pension Benefits Protection Act, Minn. Stat. ch. 181B (1976) (hereinafter "Minnesota Pension Act"),[1] was preempted by the National Labor Relations Act, 29 U.S.C. § 151 *et seq.* ("NLRA") and was unconstitutional under the United States and Minnesota Constitutions.

[1] The Minnesota Pension Act is contained in the Joint Appendix filed by appellants at 132. Hereafter all references to items in the Joint Appendix will be cited as "App. at ——."

On November 25, 1975, White Motor moved for partial summary judgment or a preliminary injunction, based solely on the ground that the Minnesota Pension Act was preempted by the NLRA. The State moved, on the same date, for abstention pending state court interpretation of the challenged law and resolution of the state constitutional claims.

By Order dated March 18, 1976, the district court, the Honorable Donald D. Alsop, declined to abstain and ruled that the Minnesota Pension Act was not preempted by the NLRA. Consequently, the court also denied plaintiff's motion for a preliminary injunction, which was based solely on the federal preemption issue, on the grounds that there was no substantial likelihood of success on the merits.[2]

With other constitutional issues still pending before the district court,[3] White Motor appealed the denial of the preliminary injunction to the Court of Appeals for the Eighth Circuit pursuant to 28 U.S.C. § 1292(b). On December 2, 1977, the court of appeals reversed the judgment of the district court, ruling that the Minnesota Pension Act was preempted by the national labor policy embodied in the NLRA.[4]

On December 7, 1976, the State filed a notice of appeal pursuant to 28 U.S.C. § 1254(2). Following the receipt of appellant's Jurisdictional Statement and appellees' Motion to Dismiss or Affirm, this Court requested the United States Department of Justice to file a Memorandum for the United States as *Amicus Curiae*. Such a memorandum was filed in August, 1977, supporting the State's contention that the Minnesota Pension Act was not preempted by the NLRA.

[2] *See* district court opinion, App. at 106.

[3] White Motor's constitutional claims have not yet been litigated in the district court. In another case, however, a three-judge federal panel has recently upheld the constitutionality of the Minnesota Pension Act against challenges similar to those raised by White Motor. Fleck v. Spannaus, —— F. Supp. ——, No. 3-75 Civ. 178, (D. Minn. Sept. 2, 1977). The plaintiffs in Fleck v. Spannaus have noticed an appeal to this Court from the decision of the three-judge panel.

[4] *See* court of appeals opinion, App. at 109.

II. DESCRIPTION OF THE ACT.

In an attempt to protect Minnesota residents from the inadequacies of many private pension plans,[5] the Minnesota legislature enacted the Minnesota Pension Act, making it effective April 10, 1974. Shortly thereafter, after years of study,

[5] It has been estimated that, of the millions of American workers who have labored for many years with the belief that they would be receiving, upon retirement, pension benefits from their employers' private pension plans, only about 15% actually receive any of such promised pensions. *See* Hearings on Private Welfare and Pension Plans, Before the Subcommittee on Labor of the Senate Committee on Labor and Public Welfare, 92d Cong., 2d Sess. 656 (June 3, 1972). (This hearing was chaired by then-Senator Walter Mondale and the hearing is hereinafter referred to as the "Mondale Hearing". A copy of this hearing was lodged with the district court herein.) Senator Harrison A. Williams, Jr., of New Jersey, made the following statement which reflects not only the deplorable condition of private pension programs but also the increasing awareness by legislative bodies of such problems in recent years:

> The subcommittee heard a long succession of witnesses tell stories of heartbreak caused when the bubble of retirement security burst.
>
> * * *
>
> And, in all of these cases, regardless of where the worker was from or what industry he was in, there was a common denominator; all of these workers had toiled away a lifetime anticipating a pension they never received. We were able to trace these personal, financial disasters to a number of specific deficiencies in pension plans.
>
> Among these were:
>
> Inadequate or nonexistent vesting provisions;
>
> Inadequate funding; . . .

Hearings, Before the Subcommittee on Labor of Senate Committee on Labor and Public Welfare, 93 Cong., 1st Sess. 173 (Feb. 15-16, 1973). For a detailed description of some of the hardships suffered by White Motor retirees as a result of the reduction in their pension benefits, *see* App. at 48-87.

Congress passed the Employee Retirement Income Security Act (hereinafter "ERISA"), 29 U.S.C. §§ 1001 *et seq.*

The Act is directed at two historically typical methods by which employers avoid the payment of retirement benefits allegedly assured by private pension plans: (a) the mass termination of employees who have participated for a reasonable number of years in their employer's pension plan before their pension benefits have vested under the plan and (b) the termination of pension plans inadequately funded to provide the retirement benefits provided for in the plan. The Minnesota Pension Act, which is administered by the state, protects Minnesota employees with ten or more years of covered service under a pension plan from the forfeiture of pension benefits resulting from either method of avoiding the payment of pension benefits.[6]

That protection is afforded by requiring a Minnesota employer who ceases to operate a place of employment in Minnesota or terminates a pension plan to pay a pension funding charge if either such action results in the forfeiture of pension benefits. Minn. Stat. §§ 181B.03-.04 (1976).[7] The pension funding charge is used to purchase annuities that will provide the protected employees with monthly pension payments on reaching retirement age. Minn. Stat. § 181B.12 (1976). The benefit provided by the annuity must be equal

[6] Those terms used in the Minnesota Pension Act are generally defined in Minn. Stat. § 181B.02 (1976). An "employee" for purposes of the Act includes these participants in the White Motor pension plan: retired former employees presently eligible for pension benefits (and, if deceased, their survivors in some instances); and "deferred vested" former employees, not of retirement age, who are eligible under the plan to receive some benefits upon reaching normal retirement age. *See* Minn. Stat. § 181B.02, subd. 4 (1976).

[7] *See also* Minn. Stat. § 181B.02, subd. 6(b) (1976).

to that portion of the employee's normal retirement benefit, as defined in the pension plan, that accrued during his or her years of covered service under the plan.

III. APPLICATION OF THE ACT TO WHITE MOTOR.

The factors leading to the instant controversy have a long history. The Minneapolis-Moline Company, a farm implement manufacturer, had operated plants in Minneapolis and Hopkins, Minnesota, for many years. Since 1950 its unionized hourly workers had been covered by the company's pension plan. Appellees purchased the Minneapolis-Moline Company[8] in January, 1963, and became the successor to its pension plan. They continued to operate the two plants for nine and one-half years.

In January, 1972, White Motor announced it was closing both plants. At that time there were about 1,000 hourly employees at the two plants.[9] On June 30, 1972, the Lake Street plant in Minneapolis, the larger of the two plants, was closed. The Hopkins plant, with more than 200 workers, was kept open. Also on June 30, 1972, White Motor attempted to terminate the pension plan for its hourly employees at both plants. Because it was held in an arbitration[10] between the union[11]

[8] Mondale Hearing at 721. Prior to this purchase, the Minneapolis-Moline Company had changed its name to Motec Industries, Inc. After purchase, plaintiffs operated the company as a division under the name Minneapolis-Moline, Inc.

[9] Mondale Hearing at 736.

[10] White Motor Corp. and U.A.W., 61 Lab. Arb. 320, 328, 331 (1973) (Seitz, Arbitrator) (hereinafter the "Arbitration Award"). In subsequent litigation, the award was upheld by the federal courts. *See* U.A.W. v. White Motor Corp., Civ. File No. 4-73-422 (D. Minn., May 6, 1974); *aff'd* U.A.W. v. White Motor Corp., 505 F.2d 1193 (8th Cir. 1974), *cert. denied*, 421 U.S. 921 (1975).

[11] International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (hereinafter the "UAW").

representing the hourly employees and White Motor that the plan could not be terminated until May 1, 1974, the company again terminated the pension plan on May 1, 1974, approximately 20 days after the Minn. Pension Act went into effect. There are slightly less than 1,000 current retirees who were participants in the pension plan at the time of its termination.[12]

The federal protection afforded by ERISA did not go into effect until after the May 1, 1974, termination of the White Motor pension plan[13] and, therefore, only the Minnesota Pension Act provides protection to these participants in the pension plan who lost substantial retirement benefits because of the plan's termination.

Following notice from White Motor in April, 1974, of its intent to terminate the 1971 pension plan effective May 1, 1974, appellant Commissioner of Labor and Industry for Minnesota, pursuant to his statutory duties, commenced an investigation to determine the extent of the forfeiture of pension benefits that would result and the corresponding obligation, if any, of the company to pay a pension "funding charge"[14] under the Minnesota Pension Act.

On August 18, 1975, after the instant action was filed in district court, the state notified White Motor of the assessment of a pension funding charge and informed the company that it could request a hearing concerning, *inter alia*, the amount

[12] Mondale Hearing at 773, 774, (Table). *See* Affidavit of H. Herbert Phillips, par. 18(b), App. at 21.

[13] ERISA termination insurance provisions became effective on the date of enactment, Sept. 2, 1974, and apply retroactively to plan terminations that occurred after June 30, 1974. 29 U.S.C. §§ 1381(a) and 1381(b).

[14] *See* Minn. Stat. § 181B.03 (1976).

and method of satisfaction of that charge.[15] White Motor did request such a hearing but the hearing has been held in abeyance pending the outcome of the instant litigation. The pension funding charge cannot be certified or become due for payment until the completion of the administrative proceedings. Minn. Stat. §§ 181B.09-.11 (1976).

The following is a brief description of the pension plan's history and application to the White Motor employees.

After the pension plan was initially established in 1950, the plan was carried forward in each of the subsequent years for which collective bargaining agreements were executed: 1950, 1954, 1959, 1962, 1965, 1968 and 1971. The 1971 version of the plan (hereinafter the "1971 pension plan") is the version most pertinent to this action.[16] Over the years the plan provided for progressively increasing retirement benefits promised to the employee at the normal retirement age of 65. Even with those increases, the benefits provided during retirement on the average never exceeded $2,500.00 a year.[17] In order to encourage employees to opt for early retirement, the 1968 and 1971 versions of the pension plan also provided for supplemental retirement benefits to be paid after early retirement but only until the retiree reached 65, the normal retirement age.[18]

White Motor's promise of pension benefits upon retirement was unquestionably used by it to attract employees to its work-

[15] *See* Affidavit of Jon K. Murphy, par. 13 and Exhibit B attached thereto. App. at 35 and 40 respectively.

[16] The history of the pension plan, to the extent relevant here, is set forth in the Arbitration Award. The 1971 pension plan is fully set forth in the Record of the Mondale Hearing at 678-705 and is reproduced in part in App. at 146.

[17] Mondale Hearing at 722 (Table) and *see* the Retirees' Affidavits, App. at 47-87.

[18] *See* Arbitration Award at 331-332 and the 1971 pension plan, Sections 6.02(b) and 6.15, App. at 148-49 and 159-65, respectively.

force[19] and evidence was submitted by the State showing that the company was able to keep an employee's wage increases depressed by promising the employee a retirement pension.[20]

At the time of the closing of the Lake Street plant in 1972, the majority of the employees were between the ages of 45 and 64.[21] Some current retirees had worked at White Motor's plants for as long as 40 years and many employees retired after as long as 25 to 40 years of employment[22] with the company and its predecessor. Often other job opportunities were refused because employees did not want to lose the pension benefits they were supposed to be accruing during those years of employment.[23] Thus, over the years, the company had been rewarded with a loyal and productive workforce, and at least part of this loyalty and productivity was due to the company's promise of reasonable retirement benefits.[24]

In addition to the pension benefits outlined in the 1971 pension plan as described above, the plan also provided that pension rights would be enforceable only against the Pension Fund (§ 6.09) and that White Motor employees had no vested rights under the Plan prior to retirement (§ 6.17).[25] Furthermore, White Motor retained the right to terminate unilaterally the pension plan at any time so long as the remaining funds were properly distributed (§ 10.02).[26]

[19] Mondale Hearing at 672-673.
[20] *Id.* at 670, 715-719; Affidavit of Roy G. Pierce, par. 10, App. at 67; Affidavit of William E. Peters, par. 7, App. at 71; Affidavit of Alfred H. Behrendt, par. 7, App. at 48; and Affidavit of Clarence Grose, par. 7, App. at 62.
[21] *Id.* at 774 (Table).
[22] *See id.* at 669, 673, 674, 712, 713; Retirees' Affidavits. App. at 47-87.
[23] Mondale Hearing at 667; Affidavit of Mildred MacDonald, par. 8, App. at 83; Affidavit of Alfred H. Behrendt, par. 8, App. at 48; and Affidavit of Donald W. Duffy, par. 9, App. at 85-86.
[24] *See* Mondale Hearing at 667-668.
[25] *See* App. at 165.
[26] *Id.* at 169.

Despite these provisions, which in effect absolved the company of liability if the pension fund was insufficient to pay the accrued pension benefits, during their employment the members of the White Motor rank and file generally understood that they would each receive full pension benefits throughout their retirement years.[27] This understanding was nurtured not only by White Motor but also by the UAW[28] to such an extent that even employees who over the years had participated in contract negotiations relating to the pension plan did not question the company's promise of full pension benefits during a worker's retirement years.[29]

An employee's justifiable expectation of full pension benefits was cemented at the time of his retirement. He would execute a retirement application prepared by White Motor wherein his monthly pension benefit was set forth and wherein the company stated that the pension benefit would be paid during his remaining years of retirement in level monthly amounts and that, if elected, survivor beneficiary benefits would likewise be so paid upon his death.[30]

[27] Mondale Hearing at 670, 709; and *see* the Retirees' Affidavits, App. at 47-87. Because of this understanding, at least some did not set aside additional funds to be used to supplement other meager sources of retirement income such as social security. *See* Affidavit of William Preston, par. 8, App. at 72; Affidavit of William E. Peters, par. 8, App. at 70; Affidavit of Roy G. Pierce, par. 10, App. at 66; Affidavit of Clarence Grose, par. 8, App. at 62.
[28] Mondale Hearing at 710.
[29] *Id.* at 671-672, 709, 713; Affidavit of Emanuel Walstrom, par. 7, App. at 73; Affidavit of William E. Peters, par. 7, App. at 70; and the Affidavit of Alfred H. Behrendt, par. 7, App. at 47. And, as noted *infra*, until almost the very day when White Motor ultimately closed the Minneapolis Lake Street plant, White Motor continued to inform its employees that they would be receiving their full pensions.
[30] Mondale Hearing at 670, 715-719, and *see* the Retirees' Affidavits, App. at 47-87.

In March, 1972, White Motor announced that it intended to terminate the 1971 pension plan as of June 30, 1972, the day on which the Lake Street plant was to close.[31] But, the company did not disclose the full impact of the pension plan termination until the June 3, 1972 Mondale Hearing. At that hearing, White Motor announced that the 1971 pension plan covering its union employees was only about 30 percent funded, and that there was a net deficiency in the fund of some fourteen and one-half million dollars when the fund was measured against the present value of the pension benefits promised.[32] White Motor further announced that when the 1971 pension plan was terminated, pension benefit payments would immediately be reduced to the level of benefits determined by White Motor in a March, 1972, "Guarantee Letter" and that supplemental pension benefits owing to employees who had opted for early retirement would no longer be paid.[33] This "Guarantee Letter" effectively reduced the level of benefits provided for in the 1971 pension plan by aproximately 60 percent.[34] The reduced benefits would be paid from the pension fund until it was exhausted and thereafter directly from company funds.[35]

[31] Arbitration Award at 332.

[32] Mondale Hearing at 783. The company also terminated its other pension plan covering non-union salaried employees and executives as of June 30, 1972. In contrast, the pension fund for this plan was over seventy percent funded at the time and was, therefore, sufficiently funded to provide full pension benefits for these employees and executives during retirement. *Id.* at 736.

[33] Mondale Hearing at 738-739, 785. The "Guarantee Letter," dated March 3, 1972, is reproduced in the Record of the Mondale Hearing at 729 and in the App. at 172. It limits the company's obligation to pay pension benefits on termination of the plan and exhaustion of the pension fund to that amount necessary to pay benefits at the levels set forth in the 1968 version of the pension plan, with certain adjustments for an employee's years of credited service with the company prior to its purchase by plaintiffs in January, 1963. The letter was not a part of the 1971 collective bargaining agreement which included the pension plan and which was ratified by the rank and file. It resulted, apparently, from discussions between White Motor and the UAW in March, 1972, at about the time plaintiffs announced they were terminating the 1971 pension plan on June 30, 1972. *See* the Arbitration Award at 329.

When the pension plan was initially terminated on June 30, 1972, White Motor ceased paying regular monthly pension benefits as well as supplemental benefits where applicable, and paid benefits only to the extent offered under their "Guarantee Letter."[36] Pursuant to the arbitration award thereafter obtained by the UAW, however, the company was not only prohibited from terminating the pension plan until May 1, 1974, but was also required to pay full benefits out of the regular pension fund until it became insufficient to do so.[37] Thus, after having had benefits substantially reduced for a little over a year while litigation ensued, the retirees again received benefits under the 1971 pension plan rather than in the reduced amount set forth in the "Guarantee Letter" until the pension fund became insufficient to pay those benefits in March, 1976. As of April 1, 1976, the retirees' benefits were

[34] Letter, UAW to retirees, dated June 26, 1975, referred to in paragraph 19 of the Affidavit of Jon K. Murphy, App. at 36-37.

[35] The practical effect of this decrease in the level of benefits was graphically brought home at the Mondale hearing. For example, Emanuel Walstrom was an employee of the Lake Street plant who at that time was about to retire. Just two days before the June 3, 1972 hearing he received an early retirement application form from the company explicitly stating that under the 1971 pension plan he would be receiving $355.66 a month, including supplemental benefits until he reached 65, and then $195.11 a month in regular benefits until his death. Because of the plan's termination and its lack of adequate funding, however, Mr. Walstrom's regular monthly pension benefits for life under the "Guarantee Letter" are only $76.94, and he received no supplemental benefits. Mondale Hearing at 713, 741; and *see* the Retirees' Affidavits, App. at 47-87.

[36] App. at 171-173.

[37] *Id.*

again reduced to the level of benefits offered by the "Guarantee Letter," and those retirees are now living on approximately 40 percent of the benefits provided for under the 1971 pension plan.[38]

SUMMARY OF ARGUMENT

A. The Minnesota Pension Act is not preempted by the National Labor Relations Act since it regulates activities peripheral to the collective bargaining process and is not "plainly within the central aim of the NLRA." *San Diego Building Trades Council v. Garmon*, 359 U.S. 236, 244 (1959). The Act comes into play only when an employer ceases operation of a place of employment or terminates a pension plan resulting in the forfeiture of accrued pension credits.

The court of appeals' reliance on *Local 24, Teamsters v. Oliver*, 358 U.S. 283 (1959) and *Lodge 76, Machinists v. Wisconsin Employment Relations Comm.*, 427 U.S. 132 (1976) was misplaced. Unlike the Minnesota Pension Act, the state antitrust law preempted in *Oliver* absolutely precluded the parties from bargaining on a mandatory subject of collective bargaining. Furthermore, the very nature of a state antitrust law is likely to bring it into direct conflict with federal labor law as exemplified in *Oliver*. Similarly, the action of the state board in *Lodge 76, Machinists*, in enjoining a concerted refusal to work overtime by union employees during the course of contract negotiations, was, unlike the situation in the instant case, obviously a direct and significant intrusion into the very heart of the collective bargaining process.

[38] The impact of this reduction upon the retirees is substantial. *See* Retirees' Affidavits, App. at 47-87 and the Mondale Hearing generally.

B. The Congress has evidenced its intent that, prior to ERISA, the regulation of pension plans was within the power of the states. When Congress, in 1958, enacted the Welfare and Pension Plans Disclosure Act, 72 Stat. 997, a precursor to ERISA, it included a provision specifically providing that the Act was *not* to preempt the law "of any State affecting the operation or administration of employee . . . pension benefit plans." It is clear from the legislative history that Congress was aware of the specific problem of the forfeiture of pension benefits caused by clauses limiting liability and intended the states to retain their traditional power in all areas of pension regulation not specifically covered by the Pension Disclosure Act.

More recently, Congress, by the very enactment of ERISA, has given a further indication that state pension regulation prior to ERISA did not conflict with the NLRA. Furthermore, the provision in ERISA preempting all state laws relating to employee benefit plans, 29 U.S.C. § 1144(a), and the legislative history of this provision, show that Congress was fully aware of the existing state power to regulate the substantive aspects of pension plans.

C. The Minnesota Pension Act is a valid police power enactment, *DeCanas v. Bica*, 424 U.S. 351, 356 (1976), and thus is not preempted by federal labor law because of the police power exception to the NLRA preemption doctrine which allows for state laws of general applicability affecting the health, safety or well-being of a state's citizens. *Farmer v. United Brotherhood, Local 25*, 97 S. Ct. 1056 (1977); *Local 24, Teamsters v. Oliver*, 358 U.S. 283 (1959).

ARGUMENT

I. THE MINNESOTA PENSION ACT IS NOT PREEMPTED BECAUSE IT DOES NOT REGULATE THE CONDUCT OF PARTIES ENGAGED IN THE COLLECTIVE BARGAINING PROCESS NOR AFFECT THE BARGAINING PROCESS.

The Minnesota Pension Act simply does not create the type of conflict with national labor policy that this Court has determined warrants preemption. Examination of those judicially-established tests for NLRA preemption, in the context of the conduct regulated by the Minnesota Pension Act, leads to the unavoidable conclusion that the Minnesota law does not conflict with the national labor policy.

A primary objective of Congress in enacting the NLRA was to establish a mechanism and framework within which labor-management relations could proceed peacefully and with a minimum of economic disruption. *See* 29 U.S.C. § 151. The mechanism relied upon was the collective bargaining process as regulated and protected by the NLRA. Much of Congressional labor policy and, correspondingly, the provisions of the NLRA are, therefore, directed primarily to the relations and conduct of labor and management while engaged in that bargaining process. Just as the major thrust of the NLRA was directed at the conduct of parties engaged in the collective bargaining process itself, it follows naturally that the primary thrust of preemption by the NLRA of state laws involves state regulation directed at the conduct of parties engaged in collective bargaining.

In furtherance of the Congressional goal of establishing and protecting effective and equitable collective bargaining, Congress identified in sections 7 and 8 of the NLRA, 29 U.S.C. §§ 157-58, certain conduct of employees and employers that is protected from interference and other conduct that is prohibited as unfair labor practices. In order to preserve the integrity of this fundamental aspect of national labor policy, this Court formulated the *Garmon* rule of preemption, explaining that:

> [w]hen it is clear or may fairly be assumed that the activities which a State purports to regulate are protected by § 7 of the National Labor Relations Act, or constitute an unfair labor practice under § 8, due regard for the federal enactment requires that state jurisdiction must yield. To leave the States free to regulate conduct *so plainly within the central aim of federal regulation* involves too great a danger of conflict between power asserted by Congress and requirements imposed by state law.

San Diego Building Trades Council v. Garmon, 359 U.S. 236, 244 (1959) (emphasis added). This standard was reiterated in *Amalgamated Ass'n of Street Employees v. Lockridge*, 403 U.S. 274 (1971).

Thus, while it is clear that states may not regulate conduct "plainly within the central aim" of the NLRA, it is equally certain, that this Court

> cannot declare pre-empted all local regulation that touches or concerns in any way the complex interrelationship between employees, employers, and unions; obviously, much of this is left to the states.

Amalgamated Ass'n of Street Employees v. Lockridge, supra, 403 U.S. at 289. *See Lodge 76, Machinists v. Wisconsin Employment Relations Commission*, 427 U.S. 132 (1976); *Garner v. Teamsters, Chauffeurs and Helpers Local Union*, 346 U.S. 485, 488 (1953).

Although the court of appeals in the instant case, in reversing the district court, asserted that the Minnesota Pension Act alters the collective bargaining process, the activity that the Minnesota Pension Act in fact regulates is not the negotiation of the terms of a pension plan but rather an employer's cessation of the operation of a place of employment or a pension plan, resulting in the forfeiture of accrued pension credits.[39] Under the Minnesota Pension Act workers are protected by requiring the employer, in the event of a plan termination, to purchase annuities that will pay to each worker, on reaching retirement age, the benefits he or she would have received under the Plan for his years of credited service had the plan not been terminated.

Significantly, the Minnesota Pension Act contains no provisions that attempt to regulate or dictate the institution of a pension plan, the on-going operation of a pension plan, the level or type of benefits provided by a pension plan, or the inclusion of particular terms in bargaining agreements. The only conduct actually regulated by the Minnesota Pension Act is the termination of pension plans, and only such terminations as would result in the forfeiture of pension benefits. Thus, the main point of even peripheral contact between the Minnesota Pension Act and a collectively bargained pension plan is the

[39] The Minnesota Pension Act also applies where there is a "substantial reduction in the number of employees at a place of employment." Minn. Stat. § 181B.02, subd. 6(b) (1976). However, the instant action does not involve such an application of the Act.

Act's requirement that a company which contracts with its workers to pay a certain level of pension benefits upon retirement must pay those benefits notwithstanding any provision in the pension plan absolving the company of liability[40] in the event that the pension plan is terminated and the pension fund is insufficient to meet the benefit levels provided for in the pension plan.[41]

A reading of the provisions of sections 7 and 8 of the NLRA, 29 U.S.C. §§ 157-58, reveals that the conduct regulated by the Minnesota Pension Act is neither a protected activity nor a prohibited unfair labor practice. Indeed, it is clear that the conduct regulated by the Minnesota Pension Act is at most peripheral to the collective bargaining process, *see San Diego Building Trades Council v. Garmon*, 359 U.S. at 243-44, and is therefore not, in the language of *Garmon*, "plainly within the central aim of federal regulation."

The court of appeals, in ruling the Minnesota Pension Act preempted by the NLRA, relied primarily on *Local 24, Teamsters v. Oliver*, 358 U.S. 283 (1959) and *Lodge 76, Machinists v. Wisconsin Employment Relations Comm.*, 427 U.S. 132 (1976). Those two cases, however, are inapposite since they both involved conduct striking at the very heart of the collective bargaining process rather than conduct in the peripheral penumbra allowed to states by *Garmon*.

In *Oliver*, the Ohio courts had held that the state's antitrust laws rendered invalid that part of a collective bargaining agreement that established minimum rentals to be paid for trucks leased to a trucking company when the owner drove

[40] *See* text at p. —— *supra* and App. at 165, 169.

[41] The Minnesota Pension Act also gives workers vested rights after 10 years of service; whereas, the White Motor Pension Plan granted vested rights if a worker had 10 years of service and was at least 40 years of age.

the truck as an employee of the company. This Court determined that the rental provisions of the agreement were so related to the wage provisions that they were a mandatory subject of bargaining. Thus, the effect of the state antitrust law was to absolutely prohibit bargaining on a mandatory subject of collective bargaining. This Court reversed the state court, holding that the Ohio antitrust statute could not be applied to prohibit the effectuation of the parties' agreement concerning a subject of mandatory bargaining under the NLRA.[42]

The court of appeals, in expanding the *Oliver* case to cover the instant case, overlooked two fundamental, yet obvious, distinctions between the Ohio antitrust statute preempted in *Oliver* and the Minnesota Pension Act, distinctions which indicate that the nature and degree of conflict that existed between the state regulation and federal labor policy in *Oliver* are plainly not presented by the Minnesota Pension Act.

First, and most significantly, the effect of the Ohio antitrust statute in *Oliver* was to impose an *absolute prohibition* on inclusion of certain substantive terms that the parties had agreed upon in the collective bargaining agreement. Indeed, any agreement between the parties establishing minimum rentals for the driver-owned trucks would have been precluded by the Ohio law. Although the NLRA is ordinarily not concerned with the substance of collectively-bargained agree-

[42] It is interesting to note that even considering the clear conflict between the NLRA and the Ohio antitrust law in Oliver, the case was viewed by one commentator as being perhaps unduly broad.

> In one respect, the case [Oliver] carries the preemption doctrine even beyond the limits proposed by those who have been most ardent in favor of broad state exclusion; for the state statute whose application was disallowed clearly met the test of 'general applicability' as defined by its own advocates.

The Supreme Court, 1958 Term, 73 Harv. L. Rev. 84, 229 (1959).

ments,[43] the effect of the Ohio statute was to *absolutely preclude* negotiation and agreement on a mandatory subject of collective bargaining. Additionally, because the state antitrust law effectively prevented inclusion of the terms in the agreement, not only the bargaining process but also the ongoing employer-employee relationship during the life of the agreement was affected. It was such a direct and material interference with the bargaining process that prompted this Court to find in *Oliver* that preemption was required.

In contrast, the Minnesota Pension Act does not purport to dictate the substantive terms of pension plans or to restrict the scope of the terms of agreement that the parties may reach in collective bargaining concerning pension plans. Nor does the Minnesota Pension Act intrude into the ongoing employer-employee relationship by preventing the effectuation of the terms of an extant collectively-bargained pension plan. In fact, the Minnesota Pension Act cannot even apply to a situation in which both the employment relationship and the pension plan remain in effect. Rather, the Minnesota Pension Act comes into play only when an employer ceases to operate a place of employment or terminates a pension plan.[44] Indeed, there is a further requirement that such termination results in a forfeiture of accrued pension credits before the Minnesota Pension Act can apply. Thus, the Minnesota Pension Act affects only the *dissolution* of pension rights resulting from the termination of a pension plan or the employment relationship of covered employees. That is not the type of substantive regulation of a collectively-bargained agreement that was preempted in *Oliver*; the parties here are not prevented from

[43] H. K. Porter Co. v. N.L.R.B., 397 U.S. 99 (1970).

[44] *See* n. 35 *supra*.

"carrying out their agreement" on a mandatory subject of collective bargaining in the sense that the parties in *Oliver* were.[45]

The second major distinction between *Oliver* and the instant case is that *Oliver* involved a state antitrust statute. As this Court has noted:

> [T]he accommodation between federal labor policy and antitrust policy is delicate. Congress and this Court have carefully tailored the antitrust statutes to avoid conflict with the labor policy favoring lawful employee organization, not only by delineating exemptions from antitrust coverage but also by adjusting the scope of the antitrust remedies themselves. State antitrust laws generally have not been subjected to this process of accommodation. If they take account of labor goals at all, they may represent a totally different balance between labor and antitrust policies. Permitting state antitrust law to operate in this field could frustrate the basic federal policies favoring employee organization and allowing elimination of competition among wage earners, and interfere with the detailed system Congress has created for regulating organizational techniques.

[45] The fact that the Ohio law vitiated a contract term dealing with a mandatory subject of collective bargaining was critical in Oliver. Local 24, Teamsters v. Oliver, *supra*, 358 U.S. at 295. While pensions are a mandatory subject of collective bargaining, not every aspect of pensions falls into that category. For example, bargaining concerning retiree benefits has been held not to be mandatory. Allied Chemical & Alkali Workers of America, Local 1 v. Pittsburgh Plate Glass Co., 404 U.S. 157 (1971). Similarly, the cost to the employer of a noncontributory group insurance plan is not a mandatory subject of collective bargaining. Sylvania Electric Products, Inc. v. N.L.R.B., 291 F.2d 128 (1st Cir.), *cert. denied*, 368 U.S. 926 (1961). Appellant is aware of no NLRB or court decisions determining that provisions of a pension plan limiting the employer's obligation to pay agreed-to pensions on termination of the plan are within the scope of mandatory bargaining subjects.

Connell Construction Co. v. Plumbers Local 100, 421 U.S. 616, 636 (1975) (citation omitted).

Although the court of appeals chose to read *Oliver* broadly and emphasized some of its more general *dicta* relating to preemption, such an expansive reading overlooks the fact that *Oliver* was but a part of a long history of efforts by both Congress and the courts to deal with the conflict that exists between federal labor policy and antitrust policy, both at the state and federal level.[46] *See, e.g., Connell Construction Co. v. Plumbers Local 100, supra*, 421 U.S. at 635-36; *Local 189, Amalgamated Meat Cutters v. Jewel Tea Co.*, 381 U.S. 676 (1965); *Weber v. Anheuser-Busch, Inc.*, 348 U.S. 468, 479-81 (1955); *Mackey v. National Football League*, 543 F.2d 606 (8th Cir. 1976), *cert. denied*, —— U.S. ——, 98 S.Ct. 28 (1977); Clayton Antitrust Act § 20, 29 U.S.C. § 52; Cox, *Labor Law Preemption Revisited*, 85 Harv. L. Rev. 1337, 1357 (1972).[47]

Indeed, the district court herein quite correctly distinguished *Oliver* from the instant case on the grounds that the state law challenged therein was an antitrust statute, recognizing that

> [s]tate antitrust statutes present unique problems in the area of labor preemption. . . .

[46] Although Oliver has been cited in cases not involving state antitrust laws, *e.g.* Lodge 76, Machinists v. Wisconsin Employment Relations Comm., 427 U.S. 132, 153 (1976), this certainly does not mean that the antitrust distinction between Oliver and the instant case is any less valid.

[47] As Professor Cox states:

> [Antitrust] statutes are based upon a view of policy towards combinations and collective action in the marketplace which is the very subject addressed by Congress in the N.L.R.A.

Cox, *Labor Law Preemption Revisited*, 85 Harv. L. Rev. 1337, 1357 (1972).

> The inherent conflict and delicate balance which exists between labor and antitrust policy does not exist between labor policy and the regulation of pensions.

412 F. Supp. at 381, App. at 105.

The court of appeals, in applying *Oliver* to the instant case, also relied extensively on *Lodge 76, Machinists v. Wisconsin Employment Relations Comm.*, 427 U.S. 132 (1976), where this Court reversed the Wisconsin Supreme Court's affirmance of the Wisconsin Employment Relations Commission's order enjoining a concerted refusal to work overtime by unionized employees during the course of contract negotiations.

This action on the part of the Wisconsin Commission was quite clearly a direct and material intrusion into the essence of the collective bargaining process. Wisconsin's restriction of the flexing of bargaining strength by one of the parties to collective bargaining understandably would have had a direct and significant influence on the substantive terms the parties could otherwise reach if left to the "free play of contending economic forces" each party could muster. 427 U.S. at 150.

In examining the *Lodge 76, Machinists* case, the court of appeals properly noted that states "may not directly control the substantive terms of the contract which results from that bargaining", 545 F.2d at 606, but, beyond this superficial statement, the court of appeals did not analyze the case nor purport to establish how it believed the Minnesota law "directly" interfered with the collective bargaining process or the substantive terms of the contract arrived at through that bargaining process. This lack of analysis by the court of appeals is critical since an examination of the Minnesota Act shows

that it is peripheral to the collective bargaining process and does not materially affect that process or alter the economic power of one party.[48]

In fact, analysis shows that, unlike the direct and material interference with the collective bargaining process involved in *Oliver* and *Lodge 76, Machinists*, the Minnesota Act operates on the periphery of that process and, although it undeniably relates to the result of that process in the instant case, it certainly does not intrude into the bargaining process so far as to mandate preemption.

A more well-reasoned and properly balanced approach to the issues raised by the *Lodge 76, Machinists* and *Oliver* cases was presented in a recent decision of the Third Circuit Court of Appeals, decided subsequent to the court of appeals' decision herein. *Amalgamated Transit Union v. Byrne*, 46 U.S.L.W. 2180 (3rd Cir. Oct. 11, 1977) (*en banc*), Daily Labor Report (BNA) Sept. 30, 1977, No. 191.

In *Byrne*, the state of New Jersey threatened to withdraw all state subsidies from various private transportation companies if the companies agreed with their unions to include unlimited cost-of-living increases in their collective bargaining agreements. Notwithstanding the fact that as a practical matter this threat no doubt absolutely precluded the parties from including such a provision in their bargaining agreements, the court determined that the significant state interest in transportation led it to believe that it was not the congressional intent to bar the state of New Jersey from establishing the conditions under which it would provide subsidies to pri-

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[48] Unlike the state conduct in Lodge 76, Machinists, the Minnesota Pension Act is "not directed toward altering bargaining positions of employers or unions" and at most has but an "incidental effect on relative bargaining strength." 427 U.S. at 156. (Powell, J., and Burger, C. J., concurring).

vate transportation companies. The court arrived at this conclusion by relying on *Lodge 76, Machinists* and other decisions of this court.[49]

The *Byrne* case clearly presented a situation where the parties were effectually prevented from bargaining on an aspect of a mandatory subject of collective bargaining, but the demonstrable state interests were sufficient to overcome such a potentional impingement on federal labor policy. As recounted *supra*, the effect of the Minnesota Pension Act is peripheral to the collective bargaining process and, appellant submits, impinges far less on federal labor policy than the state action upheld in *Byrne*.

Appellant submits that the application of *Oliver* and *Lodge 76, Machinists* to the instant case by the court of appeals reflects a fundamental misunderstanding of federal labor law. The court of appeals interpreted federal labor law and, in particular, *Oliver*, to mean that all of the terms of any collectively-bargained agreement are, in a sense, sanctified by the NLRA and, thus, entirely immune from the effect of any state regulation that is not directed at the prevention of violence or criminal activity, regardless of how minimally or tangentially the state regulation affects those terms of the agreement or what relationship that effect bears to the conduct that is the focus of the NLRA. Such an unwarranted extension of *Oliver* would transform the NLRA from an expression of Congressional labor policy protecting and fostering the collective bargaining process into a "contract clause" more strict and unyielding than that found in the United States Constitu-

[49] Although the majority opinion did not cite the Oliver case, it was certainly brought to the court's attention as one of the dissents discussed in Oliver. Daily Labor Report (BNA), *supra* No. 191 at D-5-D-6.

tion.[50] Appellant does not believe that *Oliver* can or should sweep so broadly as to elevate, in a sense, the policy underlying a federal statute above that expressed in a federal constitutional provision.[51]

Indeed, the general principles of labor preemption dictate that even the *Oliver* type of preemption requires a closer nexus between the conduct which is the subject of federal labor policy and the effect of the state regulation challenged. In *Oliver* and the other cases relied on by the court of appeals, the challenged state law created a direct conflict with federal labor policy. No such conflict is presented by the Minnesota Pension Act.

The substantial reduction in the expected pension benefits, as noted earlier, is a critical threat to the welfare of the nearly 1,000 retirees who in many cases devoted most, if not all, of their working lives to White Motor.[52] Equally important, the

[50] U.S. Const., art. I, § 10.

[51] White Motor's claim of NLRA preemption in the instant matter is, in a sense, analogous to the impairment-of-contract-argument under U.S. Const. art. I, § 10 still pending in federal district court. Both arguments are based on the assertion that the Minnesota Pension Act somehow interferes with or invalidates provisions of a collective bargaining contract. *See* App. at 10. White Motor, in fact, extensively briefed and orally argued the impairment-of-contracts claim as amicus curiae in Fleck v. Spannaus, —— F. Supp. —— No. 3-75 Civ. 178 (D. Minn. Sept. 2, 1977) (three judge court). Fleck involved another challenge to the Minnesota Pension Act on grounds almost identical to the constitutional claims still pending in the instant case. Yet, despite the assertions of the plaintiffs and White Motor as *amicus curiae*, the three-judge federal panel in Fleck unanimously upheld the constitutionality of the Act, relying substantially on this Court's well-established decisions which carve out an exception to impairment-of-contract principles for legitimate state police power statutes.

[52] Furthermore, the court of appeals' assertion that inadequate pension benefits were exchanged for increased wages, 545 F.2d at 609-610, should be viewed in light of the wages actually paid. Employees Grose, Pierce and Peters, for example, were being paid annual wages of only $10,000, $7,000 and $9,500 respectively after 27-30 years' service to White Motor when they retired. *See* App. at 62, 66 and 70.

approach of the court of appeals suggests a striking lack of sensitivity for our federal system and the presumption of validity which attaches to all legislation, including state legislation. A decision upholding the preemption of the Minnesota Pension Act by federal labor law would significantly undermine the power and authority of the individual states to legislate on a myriad of matters which touch and concern the bargaining process but lie only at the periphery of that process. Such an erosion of state authority in an area tangential to the bargaining process would effectively elevate all terms of a collective bargaining to a virtually untouchable status regardless of how significant the state interest or how minimal the relationship between the state law and the bargaining process. The blow that would be struck against the keystone of our constitutional system of federalism under the court of appeals' holding would be vastly more devastating than the alleged harm that the Minnesota Pension Act poses to national labor policy.

II. CONGRESS HAS EVIDENCED ITS DETERMINATION THAT STATE REGULATION OF PENSION PLANS IS COMPATIBLE WITH FEDERAL LABOR LAWS.

The NLRA contains no provisions that spell out the types of state regulation Congress intended it to preempt. This Court has pointed out that:

> A . . . factor that has played an important role in our shaping of the pre-emption doctrine has been the necessity to act without specific congressional direction. The precise extent to which state law must be displaced to achieve those unifying ends sought by the national legislature has never been determined by the Congress. . . .
>
> *Amalgamated Ass'n of Street Employees v. Lockridge*, 403 U.S. 274, 289 (1971).

Consequently, in the absence of express indications by Congress in the NLRA the courts have fashioned preemption standards based on their interpretation of congressional intent. Thus, in the field of pension plan regulation, it is important to note that there are relevant expressions of congressional intent. Unfortunately, the court of appeals read this intent in a contorted and narrow manner and attempted to minimize if not completely ignore its significance. However, to the extent that "the labor relations preemption doctrine finds its basic justification in the presumed intent of Congress[,]" *Lockridge, supra,* 403 U.S. at 302, those expressions cannot so readily be dismissed and ignored. In the adoption of both the Welfare and Pension Plans Disclosure Act of 1958, 72 Stat. 997 (hereinafter "the Pension Disclosure Act"), and ERISA, Congress has evidenced its intent that states had the power substantively to regulate state pension plans prior to ERISA.

A. The Pension Disclosure Act Expressly Reserved To The States Authority To Regulate The Administration And Dissolution Of Pension Plans.

The Pension Disclosure Act, a precursor to ERISA,[53] was enacted in 1958 following extensive congressional study of the need for legislation to protect employee pension and welfare benefits. Many of the same concerns and problems that

[53] The Pension Disclosure Act was superseded and repealed by ERISA. The Minnesota Pension Act has been preempted by ERISA, 29 U.S.C. § 1144(a). However, the preemption provision did not take effect until January 1, 1975 and it specifically does not apply to any cause of action which arose prior to January 1, 1975. 29 U.S.C. § 1144(b)(1). *See* Fleck v. Spannaus, —— Minn. ——, 251 N.W.2d 334 (1977).

were addressed by the Minnesota Pension Act motivated the enactment of the Pension Disclosure Act. As was stated in the Senate Report on the bill that was later enacted as the Pension Disclosure Act:

> Almost from the inception of congressional investigations into employee benefit plans, . . . it became apparent that there was a compelling need to more adequately protect the equities of the millions of persons who ever-increasingly were relying for their future economic security on the benefits which private employee welfare and pension plans held out.

S. Rep. No. 1440, 85th Cong., 2d Sess. (1958), 1958 *U.S. Code Cong. and Adm. News* 4137, 4139.

Among the "basic facts concerning this private social security system" that evidenced the need for protective legislation were the following:

> The employees covered by these group plans have no specific rights until they meet the conditions of the particular plans. For example, in the case of a pension plan this might involve 30 years' service and the attainment of age 65. . . .
>
> Although these plans envisaged a continuing operation to provide benefits for all employees covered—in plans which are not collectively bargained, which constitute the majority of all plans and which are predominantly administered by employers, there is actually no assurance that the benefits will be forthcoming in view of a universally employed clause in such plans to the effect that the employer can terminate the plan at his discretion. Even in collectively bargained plans the employer's agreement to provide for part or all the costs of the benefits is a short-term contract of 1 to 5 years.

S. Rep. No. 1440, 85th Cong., 2d Sess. (1958), 1958 *U.S. Code Cong. and Adm. News* 4137, 4140.

Additionally, Congress determined that as a result of the frequent failure to provide participants in pension and welfare plans with adequate information concerning the plans' operations

> [m]illions of employee-beneficiaries . . . rely blindly on the good faith of plan administrators . . . this in spite of the fact that the vast majority of plans contain provisions specifically restricting the extent of liability for the benefits provided. . . .

S. Rep. No. 1440, 85th Cong., 2d Sess. (1958), 1958 *U.S. Code Cong. and Adm. News* 4137, 4150-4151.

Thus, Congress found a need for legislation addressing the problem of detrimental reliance by employees on the expectation of pension plan benefits. Nevertheless, in attempting to alleviate the problems involving pension plans through the Pension Disclosure Act, Congress chose to limit the role of the federal government to requiring reporting on and disclosure of information concerning the terms and administration of such plans. That limitation, however, did not reflect a decision to leave pension plans free of further regulation, for the Pension Disclosure Act specifically provided that:

> The provisions of this chapter . . . shall not be held to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of the United States or of any State *affecting the*

operation or administration of employee, welfare or pension benefit plans or in any manner to authorize the operation or administration of such plan contrary to any such law.

Section 10(b), 72 Stat. 1003 (emphasis added).

Thus, it is clear from the literal language of section 10(b) of the Pension Disclosure Act that Congress fully intended the individual states to have the power to enact and/or enforce laws such as the Minnesota Pension Act relating to the "operation or administration" of employee pension plans. Any doubt as to the scope of authority left to the states under section 10 (b) is eliminated by referring to the legislative history of this provision where the Senate Report noted:

> [The Pension Disclosure Act] is a disclosure statute and by design endeavors *to leave regulatory responsibility to the States.*
>
> * * *
>
> . . . It is designed to place the primary responsibility for the policing and improved operations of these plans upon the participants themselves, with a minimum of interference in the natural development and operation of such plans, *to leave to the States the detailed regulations relating to insurance, trusts, and other phases of their operations.* . . .

S. Rep. No. 1440, 85th Cong., 2d Sess. (1958), 1958 *U.S. Code Cong. and Adm. News* 4137, 4153-4154 (emphasis added).[54]

[54] The references in the above-quoted language to regulations relating to insurance and trusts are apparently by way of illustration rather than limitation.

In People v. Automobile Transporters Welfare Fund, 17 App. Div. 2d 448, 453, 235 N.Y.S.2d 702, 706 (1962), *aff'd mem.*, 13 N.Y.2d 814, 192 N.E.2d 222, 242 N.Y.S.2d 345 (1963), *cert. denied*, 376 U.S. 908 (1964), the court held that the Pension Disclosure Act preempted the states from requiring the "duplication of the report-making required of welfare funds." The court further stated that it was clear that the "expressed purpose [of the Pension Disclosure Act] was not to displace State regulation of welfare funds." *See also* Thacher v. United Construction Wkrs., 10 N.Y.2d 439, 444, 180 N.E.2d 245, 247, 224 N.Y.S.2d 657, 660 (1960).

The court of appeals, however, chose to read section 10(b)'s grant of authority to the states in a narrow and restrictive manner and held that this provision did not authorize state regulation of pension plans by statutes such as the Minnesota Pension Act. 545 F.2d at 609. Such a circumscribed reading of section 10(b) overlooks not only the specific language of that provision and its legislative history noted above but also totally neglects the fact that the Senate Report noted a specific awareness about the exact type of problem presented herein, *i.e.*, pension plans which "contain provisions specifically restricting the extent of liability for the benefits provided. . . ." S. Rep. No. 1440, 85th Cong. 2d Sess. (1958), 1958 *U.S. Code Cong. and Adm. News* 4137, 4150-51. Although aware of such problems relating to funding, Congress did not address them in the 1958 Pension Disclosure Act. However, it is implausible to assume, as the court of appeals apparently did, that even though Congress was fully aware of the problems of plans such as the White Motor Plan which restrict the extent of its liability, that Congress did not wish to allow the states to retain the power to address such problems if they so desired.

In addition, the legislative history of the Pension Disclosure Act also reveals that Congress was aware that it was dealing with both collectively-bargained pension plans and those not so bargained for, and of relevant distinctions between those

two types of plans. *See, e.g.*, S. Rep. No. 1440, 85th Cong., 2d Sess. (1958), 1958 *U.S. Code Cong. and Adm. News* 4137, 4143-4144; H.R. Rep. No. 2283, 85th Cong., 2d Sess. (1958), 1958 *U.S. Code Cong. and Adm. News* 4181, 4188-4189.[55]

Thus, the enactment of the Pension Disclosure Act and its legislative history establishes that as early as 1958 Congress recognized the same problems in the pension area that prompted promulgation of the Minnesota Pension Act, that Congress acknowledged the validity of state regulation of pension plans in order to address those problems, and that Congress did so in full awareness of the relationship between the regulation of pension plans and its labor policy.[56]

[55] The minority and supplemental views that United States Senator Gordon Allott expressed in that Senate Report raised particular concern for the effect of the Pension Disclosure Act on the collective bargaining process. S. Rep. No. 1440, 85th Cong., 2d Sess. (1958), 1958 *U.S. Code Cong. and Adm. News* 4137, 4168 and 4175.

[56] The district court below correctly noted analogous areas in which the scope of NLRA preemption has been limited as a result of evidence of congressional intent not expressed in the NLRA itself. Specifically, the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*, permits states to impose minimum wage laws more stringent than the federal act. Indeed, it does so by stating that the federal law does not excuse noncompliance with such state laws. 29 U.S.C. § 218(a). It is, thus, similar in approach to the language in the Pension Disclosure Act. The district court additionally made reference to Smith v. Evening News Assoc., 371 U.S. 195 (1962), in which the Supreme Court, in limiting the scope of preemption under § 8 of the NLRA, 29 U.S.C. § 158, relied on a related but separate Congressional labor enactment, § 301(a) of the Labor Management Relations Act, 29 U.S.C. § 185(a) (1975). *See* Super Tire Engineering Co. v. McCorkle, 412 F. Supp. 192 (D.N.J. 1976), *aff'd*, 550 F.2d 903 (3rd Cir. 1977), *cert. denied*, 46 U.S.L.W. 3200 (Oct. 4, 1977).

B. The Enactment of ERISA And The Acknowledgement In ERISA Of The Existence And Efficacy Of Similar State Legislation Evidences The Lack Of Conflict Between Pension Protection And The NLRA.

A more recent indication that Congress perceives no conflict between pension protection, such as that provided by the Minnesota Pension Act, and the federal labor policy embodied in the NLRA was the enactment of ERISA, 29 U.S.C. § 1001 *et seq.* on September 2, 1974. That indication is manifested in two respects: 1) the very enactment of such federal regulation and 2) the acknowledgement in ERISA of the existence and efficacy of similar state regulation.

1. Federal regulation of pension plans through ERISA indicates a lack of conflict between such regulation and federal labor policy and implies a lack of conflict between state regulation of pension plans and federal labor policy.

The enactment of ERISA was a recognition that existing state and federal legislation had not been adequate to provide the necessary protection of accrued pension benefits. *See generally* 29 U.S.C. § 1001(a). Indeed, the same basic problems addressed by the Minnesota Pension Act were the object of ERISA. As the congressional findings and declaration of policy set forth in ERISA indicate, that legislation is, like Minnesota's, mainly directed at the problem of the forfeiture of accrued pension benefits that often occurs when a pension plan is terminated because the pension plan does not provide for early vesting benefits or is not sufficiently funded to fully pay benefits already accrued and vested, much less those accrued

but not yet vested. The policy of ERISA was to protect against such forfeitures by mandating minimum vesting and funding standards, which must be incorporated into private pension plans, in addition to establishing an insurance program that provides for the payment of pension benefits in the event of the termination of an underfunded plan. *See* 29 U.S.C. § 1001.

By the enactment of the minimum participation, vesting and funding provisions of ERISA[57] which impose direct restrictions on the substantive terms of pension plans, Congress interferes with the terms of pension plans far more directly than the Minnesota Pension Act does. Additionally, the termination insurance provisions of ERISA[58] impose a liability on employers for the payment of pension benefits forfeited because of an employer's termination of a pension plan.

Significantly, ERISA provides no exemption from its coverage for collectively-bargained pension plans. Moreover, Congress imposed its substantive requirements on pension plans, including those collectively-bargained-for, without purporting to modify or alter its NLRA labor policy concerning collective bargaining.[59] In fact, Congress, in ERISA, explicitly disclaimed any such modification or alteration of other federal laws:

> Nothing in this subchapter shall be construed to alter, amend, modify, invalidate, impair, or supersede any law

[57] 29 U.S.C. §§ 1051-1102.

[58] 29 U.S.C. §§ 1301-1381.

[59] Congress certainly had the opportunity in its enactment of ERISA to exempt collectively-bargained pension plans from its pervasive substantive regulation. However, it did not do so. Only minimal accommodation to its existing labor policy was deemed necessary by Congress, such as a delay in the effective date of certain funding requirements for collectively-bargained plans. 29 U.S.C. § 1086(c)(1) (1975). *See also* 26 U.S.C. § 410(b)(2)(A) (Supp. 1977) (ERISA amendment to the Internal Revenue Code).

> of the United States (except as provided in sections 1031 and 1137(b) of this title). . . .

29 U.S.C. § 1144(d). The most direct and logical conclusion to be derived from the fact that Congress imposed its regulation of pension plans on collectively-bargained plans is that such regulation poses no conflict with the collective bargaining process. Since Congress did not believe that ERISA interfered with the NLRA, it follows that the Minnesota Act does not in any way interfere with the NLRA. *Cf. DeVeau v. Braisted*, 363 U.S. 144, 156 (1960).[60]

2. ERISA treatment of state laws evidences congressional recognition that they do not contravene federal labor policy.

The treatment accorded state laws relating to pension plans by ERISA is a further indication that Congress perceived no conflict between its NLRA labor policy and state regulation of pension plans to protect pension benefits. Although such state laws are preempted by ERISA, presumably to avoid duplicate or inconsistent regulation of pension plans, preemption was not made effective until January 1, 1975. 29 U.S.C. § 1144(a).[61] Additionally, state pension laws were not pre-

[60] In DeVeau, this Court upheld a New York law which, in effect, barred an ex-felon from holding office in a union on the waterfront in the Port of New York. In responding to the claim that the New York law was preempted by the Labor-Management Reporting and Disclosure Act, 29 U.S.C. § 401 *et seq.*, which provided for the same bar on ex-felons, this Court said,

> The fact that Congress itself has thus imposed the same type of restriction upon employees' freedom to choose bargaining representatives as New York seeks to impose through [its Act], namely, disqualification of ex-felons for union office, is surely evidence that Congress does not view such a restriction as incompatible with its labor policies. 363 U.S. at 156.

[61] This provision reads as follows:

> Except as provided in subsection (b) of this section, the pro-

empted at all with respect to causes of action that arose and acts or omissions that occurred prior to that date. 29 U.S.C. § 1144(b)(1).

Furthermore, a review of the legislative history of ERISA's preemption provision shows that, in providing for delayed preemption and for the enforcement exception to preemption just noted, Congress was fully cognizant of the existing power of states to regulate the substantive aspects of pension terminations. For example, the House version of the Bill which eventually became ERISA provided in part as follows:

> (2) It is declared to be the intent of Congress that the vesting, funding, and plan termination insurance provisions of title I are to *supersede all State laws that may now or hereafter relate to (a) the nonforfeitability of participant's benefits in plans covered by the vesting and funding requirements, (b) the funding requirements of such plans,* (c) the adequacy of financing such plans, (d) the portability requirements, and (e) the insurance of pension benefits under such plans.

(Emphasis added.)[62]

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visions of this subchapter and subchapter III of this chapter shall supersede any and all state laws insofar as they may now or hereafter relate to any employee benefit plan. . . . This section shall take effect on January 1, 1975.

[62] *Staff of Conference Committee on H.R. 2,* 93d Cong., 2d Sess., Summary of Differences Between the Senate Version and the House Version of H.R. 2, pt. 3 at 32-33 (1974). Similarly, when the Senate version, S. 4, was initially reported out of the Senate Labor Committee, the Committee Report made it clear in discussing the preemption provision that it was aware of the state power concerning the substantive aspects of pension regulation and intended that ERISA should supersede such power.

> Except where plans are not subject to the Retirement Income Security for Employees Act or the Welfare and Pension Plans Disclosure Act, and in certain other enumerated circumstances, state law is preempted. *Because of the interstate character of employee benefit plans, the Committee believes it essential to*

In addition, in explaining the Conference Report to the Senate, Senator Jacob Javits, one of the managers of the Senate Bill, noted that state termination insurance plans would thenceforth be preempted.[63]

Thus, it is clear that Congress, in enacting ERISA, was aware of the state power in the area of the substantive regulation of pension plans. If Congress had perceived any conflict between such state laws and its labor policy under the NLRA, it is quite unlikely that it would have allowed such statutes to remain in effect even from September 2, 1974, (the date ERISA became law) to January 1, 1975, the effective date of the preemption provision. Nor is it logical that Congress would have provided the exception in 29 U.S.C. § 1144(b)(1), for the continued validity of causes of action arising prior to January 1, 1975, if it considered them to be in conflict with national labor policy. *Cf. DeVeau v. Braisted,* 363 U.S. 144, 147-55 (1960).

> *provide for a uniform source of law in the areas of vesting, funding, insurance and portability standards,* for evaluating fiduciary conduct, and for creating a single reporting and disclosure system in lieu of burdensome multiple reports. As indicated previously, however, the Act expressly authorizes cooperative arrangements with state agencies as well as other federal agencies, and provides that state laws regulating banking, insurance or securities remain unimpaired.

S. Rep. No. 127, 93d Cong., 1st Sess. (1973). (Emphasis added.) Congress was also aware that at least 20 state legislatures including Minnesota were considering various pension reform measures, many of which would substantively affect pensions and pension terminations. House Comm. on Ways and Means, 93d Cong. 1st Sess., pt. 1, at 447-52, Written Statements Submitted by Interested Organizations and Individuals on H.R. 10470 (Comm. Print 1973). *See also* Affidavit of Stanley A. Enebo, App. at 44.

[63] 120 Cong. Rec. 29942 (1974).

III. THE MINNESOTA PENSION ACT IS A VALID POLICE POWER ENACTMENT DIRECTED AT THE HEALTH, SAFETY AND WELL-BEING OF ITS CITIZENS AND THEREFORE IS NOT PREEMPTED BY THE NLRA.

The power of the states to enact and enforce laws of general applicability dealing with the health or safety of their citizens in the context of labor relations has repeatedly been reaffirmed by this Court. *Farmer v. United Brotherhood Local 25*, 97 S.Ct. 1056, 1061-65 (1977); *Lodge 76, Machinists v. Wisconsin Employment Relations Comm.*, 427 U.S. 132, 136 (1976); *Local 24, Teamsters Union v. Oliver*, 358 U.S. 283, 297 (1959).

This Court has recently discussed the breadth of these police powers, emphasizing that

> [s]tates possess broad authority under their police powers to regulate the employment relationship to protect workers within the State. Child labor laws, minimum and other wages laws, laws affecting occupational health and safety, and workmen's compensation laws are only a few examples.

DeCanas v. Bica, 424 U.S. 351, 356 (1976).

In examining whether the "state's interest in protecting the health and well-being of its citizens," *Farmer v. United Brotherhood Local 25, supra*, 97 S.Ct. at 1065, is substantial enough to offset any possible effect on federal labor law, this Court must make a "balanced inquiry into such factors as the nature of the federal and state interests in regulation and the potential for interference with federal regulations." 97 S.Ct. at 1064.

The interests of the State of Minnesota in the Minnesota Pension Act are obviously substantial. The Act was passed in recognition of the severe hardship that arises when workers devote much if not all of their working life to a company and then see their pension benefits extinguished or greatly reduced because of termination of the plan or some event of similar effect. The forfeiture of such pension income is particularly devastating because it affects people at an age when they frequently have no other source of significant income beyond Social Security and are normally too old or infirm to reenter the labor force. As a result, the loss of this expected pension income can result in the inability to maintain adequate shelter, clothing, or nutrition. Aside from the personal trauma caused by such a forfeiture of pension benefits, it may force people who have worked most of their lives to apply for state welfare benefits thus greatly increasing the demand for welfare funds and related services.

These significant interests of the state of Minnesota in protecting its workers from the permanent loss of their pension rights are surely even greater than the states' interests in granting striking workers temporary relief in the form of welfare benefits or unemployment compensation; forms of relief which have been repeatedly upheld by the courts against claims that they were preempted by the NLRA. *See, e.g., Grinnell Corp. v. Hackett*, 475 F.2d 449 (1st Cir.), *cert. denied*, 414 U.S. 59 (1973); *Super Tire Engineering Co. v. McCorkle*, 412 F. Supp. 192 (D.N.J. 1976), *aff'd*, 550 F.2d 903 (3d Cir. 1977), *cert. denied*, 46 U.S.L.W. 3200 (Oct. 4, 1977); *Kimbell, Inc. v. Employment Security Comm.*, 429 U.S. 804 (1976), *dismiss-*

ing for want of a substantial federal question (unreported opinion, New Mexico Supreme Court).[64]

While strikes are usually of comparatively short duration[65] and create only a temporary interruption in the income of a worker, the forfeiture of pension benefits is permanent and normally affects people too aged to compete effectively for positions in the work force. Such a forfeiture causes cruel and incalculable hardships on workers who have spent most of their lives in productive work and desire only the opportunity to retire with their expected pension benefits.

Not only is the state interest in protecting its workers from the forfeiture of their pension benefits greater than a state's interest in granting welfare or unemployment compensation to strikers, but the second part of the *Farmer* balancing test—the potential for interference with federal labor law—is substantially lower than in cases involving welfare and unemployment compensation to strikers.

In *Super Tire Engineering Co. v. McCorkle,* 416 U.S. 115, 124 (1974), this Court recognized that the availability of state welfare aid had some effect on the collective bargaining

[64] The court of appeals in subsequent litigation in Super Tire examined the pleadings presented to this Court in Kimbell and found that the question of whether granting unemployment compensation benefits to strikers unconstitutionally interfered with federal labor law had been squarely presented to this Court. Super Tire Engineering Co. v. McCorkle, 550 F.2d 903, 906 & n. 4 (3d Cir. 1977); *see also* ITT Lamp Div. v. Minter, 435 F.2d 989 (1st Cir. 1970), *cert. denied,* 402 U.S. 933 (1971); Lascars v. Wyman, 31 N.Y.2d 386, 292 N.E.2d 667, 340 N.Y.S.2d 397 (1972), *cert. denied,* 414 U.S. 832 (1973); Comment, *Federal Preemption of State Welfare and Unemployment Benefits For Strikers,* 12 Harv. Civ. Rights, Civ. Lib. L. Rev. 441 (1977); *but see* Hawaiian Tel. Co. v. Hawaii Dept. of Labor & Industrial Relations, 405 F. Supp. 275 (D. Hawaii), *appeals docketed,* Nos. 76-1584, 2050 (9th Cir. 1976).

[65] *See, e.g.,* Super Tire Engineering Co. v. McCorkle, 416 U.S. 115, 126 (1974).

process. Notwithstanding that point, however, this Court has not deemed that relationship to be sufficiently significant to raise a substantial federal question. *Kimbell, Inc. v. Employment Security Comm.,* 429 U.S. 804 (1976).[66]

While welfare assistance to strikers "pervades every work stoppage" and is "a factor lurking in the background of every incipient labor contract," *Super Tire Engineering Co. v. McCorkle,* 416 U.S. 115, 124 (1974), the Minnesota Act, as discussed above, has only a tangential effect on the bargaining process. The Minnesota Act does not in any way intrude into the employer-employee relationship. It does not even apply to the situation where both the employment relationship and the pension plan remain in effect. Rather, it comes into play only when there is a termination of a pension plan or when all or a substantial number of the employees covered by such a plan are discharged. And even then, there is the further requirement that such a termination must result in a forfeiture of accrued pension credits before the Minnesota Pension Act can apply.

The protection of the economic welfare of elderly citizens by preventing the loss of pension benefits is within the health, safety and well-being exception recognized in *Farmer* and *Oliver.* While this exception to labor preemption in the past has normally been applied to situations involving violence or physical safety, recent cases upholding the grant of welfare benefits and unemployment compensation to strikers, and the application in *Farmer* of the exception to a non-violent tort in the labor arena, suggest a recognition by this Court and lower courts that the policy considerations underpinning the

[66] *Cf* Ohio Bureau of Employment Services v. Hodory, 97 S. Ct. 1898, 1902 n. 3 (1977).

exception may apply with equal force to circumstances where the economic welfare of a state's citizens presents critical problems related to their health, safety or well-being.[67]

[67] *See* Baltimore & Ohio R.R. v. Dept. of Labor and Industry, —— Pa. ——, 334 A.2d 636, 643 (1975); Walker Manufacturing Co. v. Industrial Comm., 27 Wis.2d 69, 135 N.W.2d 307 (1965). Significantly, the United States, in its *amicus curiae* brief to this Court in the instant case stated that the Minnesota Pension Act was a "proper exercise of this state's police power." Memorandum for the United States as Amicus Curiae at 7-9.

CONCLUSION

The established judicial tests for preemption do not warrant invalidation of the Minnesota Pension Act. Furthermore, Congress, through the Pension Disclosure Act and ERISA, has indicated its intent that pension regulation was to be left to the states until ERISA became effective. In addition, the passage of the Minnesota Pension Act was a valid exercise of the sta'e's police power.

Based on the foregoing, this Court should reverse the decision of the court of appeals and order it to reinstate the judgment of the district court granting summary judgment to the state on the issue of NLRA preemption.

Respectfully submitted,

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FOR ARGUMENT

In the Supreme Court of the United States

October Term, 1977
No. 76-1184

E. I. MALONE, Commissioner of Labor and Industry for the State of Minnesota,
Appellant,

vs.

WHITE MOTOR CORPORATION and WHITE FARM EQUIPMENT COMPANY,
Appellees.

On Appeal From the United States Court of Appeals for the Eighth Circuit

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BRIEF OF APPELLEES

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 545 F.2d 599 (1976). The opinion of the District Court is reported at 412 F. Supp. 372 (1976).

JURISDICTION

The judgment of the Court of Appeals for the Eighth Circuit was entered on December 2, 1976. The State filed a Notice of Appeal to this Court on December 7, 1976. The Jurisdictional Statement was filed on February 26, 1977. On October 3, 1977, the Court noted probable jurisdiction. The Court's jurisdiction rests on 28 U.S.C. §1254(2).

STATUTES INVOLVED

Pertinent provisions of the Minnesota Private Pension Benefits Protection Act, Minn. Stat. ch. 181B (1974) (the Minnesota Pension Act) are set forth and described in the opinion of the Court of Appeals, 545 F.2d 599, at 601-2. The statute in its entirety is set forth in the Appendix at A-132.

The federal statute with which the Minnesota Pension Act conflicts is the National Labor Relations Act, 29 U.S.C. §§151, *et seq.*

QUESTION PRESENTED

Whether, under Article VI of the Constitution of the United States, federal labor law preempts a Minnesota statute which imposes upon appellees pension obligations materially in excess of those previously established in collective bargaining, thereby nullifying contract terms of agreements protected by federal labor law, and impairing future bargaining.

STATEMENT OF THE CASE

The sole issue before the Court in this appeal is the question of preemption described above. The only contracts relating to that dispute are contracts between White[1] and the UAW,[2] the union representing White employees as their collective bargaining agent. This appeal does not

1. White Motor and White Farm, its subsidiary, are collectively referred to herein as "White." Appellant is referred to herein as "the State."

2. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America and certain of its local unions are collectively called the "UAW."

involve any claim that White has not honored and is not now honoring its collective bargaining agreements with the UAW. Specifically, there is no claim that White did not fund the pension plan in accordance with its contractual obligation. Moreover, despite the State's suggestions to the contrary, there is not involved here any quasi-contract claim against White for retirement benefits or any claim against the UAW for breach of its duty of fair representation.

Nor does this appeal involve the question of application of the contracts clause of the United States Constitution (Art. I, §10) or other constitutional challenges. As noted by the State (DB 4, n.3, 27, n.51),[3] challenges to the constitutionality of the Minnesota Pension Act have been raised in another suit, *Fleck v. Spannaus*, No. 3-75 Civ. 178 (D. Minn. Sept. 2, 1977), a case which does not involve federal labor law preemption. While White's amended complaint does raise constitutional challenges to the Minnesota Pension Act, there has been no hearing in this case on any such issues. It is clear, however, that the facts supporting White's constitutional challenges are materially different from the facts presented in *Fleck*.

Hagans v. Lavine, 415 U.S. 528 (1974), directed district courts to decide a Supremacy Clause claim of preemption before convening a three-judge court to consider an injunction on constitutional grounds. White, following the doctrine of *Hagans*, sought summary judgment or a preliminary injunction on the sole ground that the Minnesota Pension Act was preempted under the Supremacy Clause. The labor law preemption question raised by the District Court's denial of an injunction is the sole issue

3. References to pages of the brief of the State (defendant below) are noted as "DB ...."

which was passed upon by the Court of Appeals. It is the sole issue on appeal here.

White Motor is an Ohio Corporation. In 1963, as a result of acquisition of the assets of Minneapolis-Moline, Inc., White Farm, a subsidiary of White Motor, began operating farm equipment manufacturing plants in Hopkins and Minneapolis, Minnesota (A-22).[4] Both before and after this acquisition, the employees at these plants were represented by a labor union. Since 1955 that union has been the UAW (A-22).

In 1950, a pension plan was established through collective bargaining for these employees. In subsequent collective bargaining agreements with White and its predecessor the pension plan was amended to increase substantially the level of pension benefits. These increases in pension benefits were applied to years of prior service as well as to years of future service (A-22-23). The inevitable result was to increase the unpaid past-service liability. In 1968, the White-UAW pension plan called for funding of unpaid past-service liability on a 30 year basis. In 1971, this provision was amended through collective bargaining to lengthen the amortization period to 35 years (A-22-24).[5] Both funding schedules were consistent with industry practice (A-24).

At the conclusion of the 1971 contract negotiations, White and the UAW entered into collective bargaining

4. "A. ......" refers to pages of the Appendix.

5. Unpaid past-service liability is, at any given time, the excess of accrued liability of a pension fund over the present value of the assets of that fund (A-89). Deferred funding of past-service liability is a common feature of pension plans (A-24). In collective bargaining, the union's agreement to deferred funding of the past-service liability over an extended amortization period is commonly the quid pro quo for the employer's agreement to increase the level of pension benefits (A-24).

agreements covering employees at the Hopkins and Minneapolis (Lake Street) plants for the period May 1, 1971 to May 1, 1974. Those agreements incorporated the "Pension Agreement and Plan" (hereinafter the "Plan"), as amended by the 1971 collective bargaining negotiations. The Plan adopted in these 1971 negotiations provided, in language unchanged since the original pension plan established in 1950 collective bargaining, as follows:

> Section 6.09—Source of Pensions.
>
> Pensions shall be payable only from the Fund and rights to pensions shall be enforceable only against the Fund (A-155).
>
> * * * * *
>
> Section 6.17—No Other Benefits.
>
> No benefits other than those above specifically provided for are to be provided under this Plan. No employee shall have any vested right under the Plan prior to his retirement and then only to the extent specifically provided herein (A-165).
>
> * * * * *
>
> Section 9.04—Rights of Employees in the Fund.
>
> * * * All payments of benefits as provided for in this Plan shall be made only out of the Fund or Funds of the Plan, and neither the Company nor any Trustee nor any Pension Committee or member thereof shall be liable therefor in any manner or to any extent (A-168).

During the 1968 and 1971 collective bargaining negotiations, White and the UAW contracted for certain Pension Guarantees applicable to the Hopkins plant and the Minneapolis (Lake Street) plant in the event of plant

closing and termination of the Plan (A-27).[6] By the pension guarantee negotiated with the UAW in 1971 but signed on March 3, 1972, White assumed, in addition to its funding obligations under the Plan, direct liability for pension payments amounting to $7,000,000 above the assets of the Fund (A-27).

The UAW insisted on the Pension Guarantee because it recognized that the capacity of the Pension Plan to provide pension protection for employees and retirees in the event of termination of the Plan was limited by the amount available in the pension fund and that termination of the Plan when the funding schedule had not been completed would result in loss of pensions (A-26-27). In fact, the 1971 pension guarantee which was signed in March, 1972, recited that "[d]uring the contract negotiations, the Union proposed and the Company agreed to guarantee retirement benefits [at an agreed level] under the Pension Plan in the event there should be a closing of the Minneapolis-Moline Plants at Lake Street, Minneapolis and Hopkins, Minnesota and a resulting termination of the

6. Footnote 33 on page 12 of the State's brief is inaccurate. The record clearly shows that the pension guarantee was granted by White in response to insistence by the UAW during the 1968 and 1971 collective bargaining negotiations (A-27). In fact, the District Court found:

> "During the 1968 and 1971 negotiations with UAW, Pension Guarantees applicable to the Lake Street and Hopkins plants were given by White Motor. These Guarantees provided that, upon termination of the pension plan, benefits were guaranteed by White Motor at a designated benefit level. By giving the Guarantees, White Motor assumed a direct liability of approximately $7,000,000." (A-91).

This finding was accepted by the Court of Appeals (A-114-115). That White and the UAW regarded the Pension Guarantee as a contractual commitment arrived at through collective bargaining is clear from the arbitration proceedings arising out of White's attempt to terminate the Pension Plan in 1972. *White Motor Corp. and UAW*, 61 Lab. Arb. 320, 329-331 (1973) (Seitz, Arbitrator).

Plan." (A-172). The 1968 pension guarantee contained a similar recital (A-171).

After suffering losses at the White Farm division in excess of $21,000,000 in the three years from 1969 through 1971, White early in 1972 informed the UAW of its intention to close the Minneapolis (Lake Street) and Hopkins plants (A-27). As a result of subsequent negotiations, the Hopkins plant has continued to operate,[7] but operations at the Minneapolis (Lake Street) plant were terminated in June of 1972 (A-27). Relying on Section 10.2 of the Plan, which expressly provided that the employer had the right to terminate the Plan at any time, White on June 30, 1972, acted to terminate the Plan. Arbitration followed, and an award adverse to White was entered and subsequently confirmed in court proceedings. The arbitrator ruled that the Plan could not be effectively terminated until May 1, 1974, the expiration date of the collective bargaining agreement then in effect (A-27-28). Thereafter, White took action again to terminate the Plan on May 1, 1974, and the Plan terminated on that date (A-28). As recognized by the State (DB 13-14), White continued to pay pensions in full from the pension fund until March 1976, when the assets of the fund were exhausted, and has since paid pensions from its own funds at the levels set out in its pension guarantee agreement with the UAW.

After the initial attempt by White to terminate the Plan and just twenty days before the Plan's termination on May 1, 1974, the Minnesota Legislature, on April 10, 1974, enacted the Minnesota Pension Act which was signed that day by the governor in a public ceremony at the site of White's then demolished Lake Street plant (A-28).

7. By later agreement between White and the UAW, a new pension plan is in effect at the Hopkins plant (A-111, n.5).

Sections 181B.03-.06 of that Act impose a "pension funding charge" directly on employers. Irrespective of contrary terms of any pension plan, those sections provide that, upon termination of a pension plan, any employee with ten years of credited service shall have a vested right to specified pension benefits computed in accordance with the statute. That right is enforceable directly against the employer rather than against the pension fund to which the employer has contributed. Sections 181B.09-.12 of the Minnesota Pension Act provide that the Commissioner of Labor and Industry, the appellant herein, shall certify amounts owing by an employer under that Act, which amounts are declared to "be a lien upon the employer's assets." Payment is to be made through the employer's purchase of prepaid deferred annuities for each employee to whom there is found to be liability (A-132, *et seq.*).

The Minnesota Pension Act conflicts with the White-UAW Pension Plan in a number of material respects, including the following:

(1) The Minnesota Pension Act gives employees vested rights to pension benefits under circumstances where the Plan does not. The Minnesota Pension Act makes employees who have ten years of credited service eligible for pension benefits, whereas the Plan requires ten years of credited service and attainment of age forty. *Compare* Sections 181B.03-.06 of the Minnesota Pension Act *with* Sections 6.03(a), 6.17 and 9.04 of the Plan.

(2) The Minnesota Pension Act imposes pension liability directly upon the employer and requires satisfaction of pension benefits from the general funds of the employer, while the Plan provides that pension benefits may be satisfied only from a specific pension fund, with the employer's responsibility for making contributions to such pension fund being limited by the Plan. *Compare* Sections 181B.03-.06 of the Minnesota Pension Act *with* Sections 6.09 and 9.04 of the Plan.

After the Commissioner of Labor and Industry had asserted his intention to enforce the Minnesota Pension Act against White, and had taken steps to do so, this action was filed on May 15, 1975. In an amended complaint filed on July 24, 1975, White asserted that the Minnesota Pension Act was in unconstitutional conflict with federal labor law and therefore preempted. White also asserted that the Minnesota Pension Act is unconstitutional on a number of other grounds (A-4, *et seq.*). The other constitutional questions have not been considered by the District Court and are not at issue here.

On August 18, 1975, the Commissioner notified White that he was assessing against it a pension funding charge of $19,150,053 under the Minnesota Pension Act (A-31). White promptly filed motions for summary judgment or for a preliminary injunction on the sole ground that federal labor law preempted the Minnesota Pension Act. The District Court denied White's motions because of its determination that the Minnesota Pension Act was not preempted.

White appealed from the order of the District Court denying the motion for a preliminary injunction. The Court of Appeals reversed. The State appealed.

SUMMARY OF ARGUMENT

The Minnesota Pension Act is in direct conflict with pension agreements negotiated by White with the UAW prior to enactment of that statute. Enforcement of that Act would prevent White from carrying out the terms of those agreements and would impose upon White massive obligations in conflict with limitations of pension liability which White had negotiated with the UAW.

The National Labor Relations Act (NLRA) requires employers and unions to bargain collectively on wages, hours, and other terms and conditions of employment, including pensions. Federal labor law protects both the bargaining process and agreements which are the product of such bargaining. The collective bargaining and contracts in this case are actually, not just arguably, protected by federal labor law. In *Local 24, Teamsters v. Oliver*, 358 U.S. 283 (1959), this Court held that the NLRA preempts state statutes which interfere with the enforcement of a collective bargaining agreement by changing or nullifying the terms of that agreement which relate to mandatory subjects of bargaining. The Court reasoned that a state statute cannot be applied to "frustrate the parties' solution of a problem which Congress has required them to negotiate in good faith toward solving * * *" 358 U.S. at 296.

Oliver followed two earlier decisions of this Court that contained similar holdings based on the Railway Labor Act. In *Railway Employes' Dept. v. Hanson*, 351 U.S. 225 (1956) and *California v. Taylor*, 353 U.S. 553 (1957), this Court announced that collective bargaining agreements made under the authority of federal labor law have the imprimatur of such law upon them and cannot be nullified by state laws. These principles were expressly re-

affirmed by this Court in *Lodge 76, Machinists v. Wisconsin Employment Relations Commission*, 427 U.S. 132, 153 (1976), and are fully applicable here.

State regulation of employment relationships is not exempt from the principle of labor law preemption as an exercise of police power unless the state action falls within the narrow and limited exceptions to labor law preemption. These exceptions cover only (a) matters of peripheral concern of federal labor law and (b) conduct which involves interests deeply rooted in local concern. Neither of these exceptions is applicable here. Bargaining over an important fringe benefit such as pensions is critical to the bargaining process. A state statute which materially changes substantive pension plan provisions is a direct, not a peripheral, interference with a right protected by federal labor law. The second exception has been applied to permit states to police "actual or threatened violence to persons or destruction of property," *Lodge 76, Machinists v. Wisconsin Employment Relations Commission*, 427 U.S. 132, 136 (1976); those state objectives are clearly not involved in this case.

The attempt of the State and the Solicitor General to expand the local interests exception to include economic welfare and general well-being of its citizens is unsupported by any authority and, if adopted, would wipe out federal labor law protection for the collective bargaining process and collective bargaining agreements.

The Welfare and Pension Plans Disclosure Act (Pension Disclosure Act) does not save the Minnesota Pension Act from the preemptive effect of federal labor law. Prior to the Pension Disclosure Act, states had no power to control substantive terms of pension plans negotiated under the umbrella of federal labor law. The Act did not cede

any such power to the states but rather left to the states their traditional power to police the operation and administration of trusts and insurance funds. The legislative history of the Pension Disclosure Act confirms that Congress did not intend to save state legislation like the Minnesota Pension Act. ERISA was enacted after the Minnesota Pension Act and after the operative facts giving rise to this lawsuit. It has no bearing on the question presented and furthermore does not indicate that the Minnesota Pension Act is relieved from the effect of the preemption principle.

ARGUMENT

I. The Minnesota Pension Act Is in Conflict With the Pension Agreements Negotiated by White and the Union Representing Its Employees. Enforcement of This State Legislation Would Interfere With Collective Bargaining, and Would Preclude the Fulfillment of Collective Bargaining Agreements Entered Into Prior to Enactment of the State Law.

In the 1971 collective bargaining negotiations, White and the UAW entered into agreements on wages and fringe benefits. These agreements increased the level of pension benefits and, as a quid pro quo, lengthened the amortization period for past service liability to 35 years. Additionally, in response to a UAW demand, White entered into an agreement to guarantee pension benefits at certain prescribed levels if the pension plan were terminated and the assets of the pension fund exhausted, thereby assuming an additional liability of $7,000,000. In return for these commitments, prior provisions of the pension plan making pensions payable only from the fund and protecting the Company from liability for the payment of pensions were continued in effect.[8]

These agreements were entered into between White and the UAW, a knowledgeable and experienced union representing White's employees. White has met and is continuing to meet its contractual pension obligations under its Minnesota agreements with the UAW. The Minnesota Pension Act has the effect of destroying these pension agreements. It does so in at least the following ways:

(1) It dictates eligibility requirements different from those agreed to by White and the UAW and incorporated into the Plan;

(2) It provides for direct liability of White for pensions, destroying the Plan's provision for sole recourse against the pension fund;

(3) It renders meaningless White's Guarantee Letter, thereby wiping out a collectively bargained solution of a problem facing the union, the company and the employees. White's commitment of $7,000,000 to reach that solution is superseded by the Minnesota Pension Act, which requires an immediate satisfaction of a pension funding charge in excess of $19,000,000.

The State would dispose of this massive conflict by referring to the conflict as "peripheral contact" (DB 18).

The conflicts between the negotiated pension plan and the Minnesota Pension Act were described by the Court of Appeals as follows:

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8. These contractual limitations upon pension liability of the employer were put into the plan in 1950, before the retirement of any employees under the plan. See p. 21, *infra*.

The Minnesota Pension Act obligations conflict with White Motor's pension plan provisions in the following respects: (1) the Act grants employees vested rights to pension benefits which are not available under the pension plan; (2) to the extent of any deficiency in the pension fund, the Act requires satisfaction of pension benefits from the general assets of the employer, while the pension plan provides that benefits shall be paid only out of the pension fund; and (3) the Act does not permit employers to escape liability for funding of pension rights, but the pension plan permits White Motor to terminate the plan at any time, and in so doing end any liability for future payments to the pension fund, save those specifically guaranteed. Thus, essential features of the pension plan, deferred funding of past service liability coupled with limited employer liability and the power to terminate, were negated by the Pension Act. (A-115); 545 F.2d at 603.

The State seeks to minimize the importance of the direct conflict between the Minnesota Pension Act and White's negotiated pension plan by repeated reference to the bargaining *process*. In essence, the State appears to argue that since the Minnesota Pension Act was not in effect at the time the labor contracts providing pensions for White employees were negotiated, the Act did not interfere with the bargaining process. The thrust of such an argument is simply a claim that if a state waits until a collective bargaining agreement has been negotiated and is in effect, the state is then free to enact legislation, under the guise of public welfare, which would modify the collective bargaining agreement by nullifying contractual limitations upon liability. Such action constitutes direct

interference not only with the negotiated contract but with the bargaining process.

It is difficult to imagine a more devastating effect upon the bargaining process than that which would result from knowledge of the parties that *after* their agreement has become effective, a state could either (a) impose on the employer massive fringe benefit obligations in addition to those agreed upon in collective bargaining, or (b), as noted by the Court of Appeals, "take away from working people contract benefits obtained through hard, fair bargaining" (A-130).

Moreover, the Minnesota Pension Act did actually interfere with collective bargaining between White and the UAW after its passage. When the 1971 collective bargaining agreements expired in 1974, White and the UAW bargained on new contracts at the Hopkins plant, including a pension plan. By the Minnesota Pension Act, the State made itself an integral part of that bargaining and restricted the ability of the parties to reach their own agreement (A-29-30).

The facts establish that a sharp and massive conflict exists between the Minnesota Pension Act and the preexisting provisions of the White-UAW pension agreements and that such conflict interferes with collective bargaining and nullifies material portions of collective bargaining agreements.

We can now consider the legal effect of the conflict.

II. State Laws Interfering With Collective Bargaining and Preventing the Performance of Substantive Provisions of Collective Bargaining Agreements Negotiated Under the Authority of the National Labor Relations Act Are Preempted Under the Supremacy Clause of the United States Constitution.

The goal of federal labor policy is the promotion of collective bargaining. The National Labor Relations Act requires that employers and unions bargain collectively with respect to wages, hours, and other terms and conditions of employment and embody their agreements in written contracts. Federal labor law thus protects not only the process of collective bargaining but the substantive terms of the agreement which is the product of that bargaining. The Court of Appeals in its decision below so held:

> If states cannot control the economic weapons of the parties at the bargaining table, *a fortiori*, they may not directly control the substantive terms of the contract which results from that bargaining. (A-122); 545 F.2d at 606.

This Court has long recognized that principle.

In *Railway Employes' Dept. v. Hanson*, 351 U.S. 225 (1956), the Court held that, by force of the Supremacy Clause of Article VI of the Constitution, a collective bargaining agreement negotiated under federal labor law (in that case the Railway Labor Act) could not be vitiated by the laws of a state. The next year, the Court decided *California v. Taylor*, 353 U.S. 553 (1957). In that case the State of California argued, much like the Solicitor General argues in his brief in this case, that "Congress has no constitutional power to interfere with the 'sovereign

right' of a State to control its employment relationships on a state-owned railroad engaged in interstate commerce" 353 U.S. at 568. It was the position of California that wages and working conditions of employees on the state-owned railroad were governed by California civil service laws rather than by the terms of a collective bargaining agreement reached under federal labor law. This Court held that such a claimed state right could not stand against the provisions of the Railway Labor Act.

In 1959 this Court decided *Local 24, Teamsters v. Oliver*, 358 U.S. 283, a case of particular importance to this case. The Supreme Court of Ohio had applied a pre-existing Ohio antitrust statute to prevent the operation of wage agreements reached in a collective bargaining contract entered into under the mandate of the National Labor Relations Act. This Court, relying on its holdings in *Hanson* and *Taylor*, reversed, stating:

> To allow the application of the Ohio antitrust law here would wholly defeat the full realization of the congressional purpose. The application would frustrate the parties' solution of a problem which Congress has required them to negotiate in good faith toward solving, and in the solution of which it imposed no limitations relevant here * * * * We believe that there is no room in this scheme for the application here of this state policy limiting the solutions that the parties' agreement can provide to the problems of wages and working conditions [citations omitted]. Since the federal law operates here, in an area where its authority is paramount, to leave the parties free, the inconsistent application of state law is necessarily outside the power of the State [citations omitted]. The solution worked out by the parties was not one of a sort which Congress has indicated may be left

> to prohibition by the several States [citations omitted]. Of course, the paramount force of the federal law remains even though it is expressed in the details of a contract federal law empowers the parties to make, rather than in terms in an enactment of Congress. 358 U.S. at 295-97.

That holding is applicable to the pension agreements entered into between White and the UAW, since pensions are a mandatory subject of bargaining under the National Labor Relations Act. *Inland Steel Co. v. NLRB*, 170 F.2d 247 (7th Cir. 1948), *cert. denied*, 336 U.S. 960 (1949).

The *Oliver* holding is simple and easy to apply and it applies directly to this case. The State and the Solicitor General have attempted to distinguish *Oliver* on a variety of grounds, none of which has any merit.

The State (DB 20-21) and the Solicitor General (SGB 18-19)[9] argue that *Oliver* is inapplicable because the Ohio act prohibited bargaining on a mandatory bargaining subject. The same can be said of the Minnesota Pension Act since employers and unions are prohibited from negotiating and agreeing upon contract terms in conflict with the Minnesota Pension Act. The question in *Oliver* was whether a state law "may be applied to prevent the contracting parties from carrying out their agreement upon a subject matter as to which federal law directs them to bargain." 358 U.S. at 295. That is precisely the question here. In other words, can the Minnesota Pension Act be applied to prevent the application of the White-UAW collective bargaining agreements expressly defining vesting rights and limiting White's pension funding liability?

9. References to the Solicitor General's Brief are noted as "SGB ......".

In fact, the Minnesota statute here presents a clearer case for application of labor law preemption than did *Oliver*. In *Oliver* the statute preempted was a state antitrust statute[10] which had been in effect for many years. Arguably, parties affected thereby would have the opportunity in collective bargaining to avoid or lessen the impact of the statute. In this case, the state law was enacted after White-UAW agreements had been in effect for several years. White and the UAW had no opportunity to consider in their negotiations the impact of any such legislation. If states cannot control the actions of parties at the bargaining table by statutes passed before collective bargaining begins, *a fortiori*, they cannot nullify the substantive terms of collective bargaining agreements by a state law enacted after the agreements became effective.

The State suggests (DB 18) that the Minnesota Pension Act comes into play only upon cessation of employ-

10. *Oliver* held that the potential for impairing the federal regulatory scheme was not lessened by the fact that the Ohio antitrust act was a law of general application (DB 20, n.42). In *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236 (1959), the Court said:

> Nor has it mattered whether the States have acted through laws of broad general application rather than laws specifically directed towards the governance of industrial relations [footnote omitted]. Regardless of the mode adopted, to allow the States to control conduct which is the subject of national regulation would create potential frustration of national purposes. 359 U.S. at 244.

See also *Farmer v. Carpenters*, 430 U.S. 290, 300 (1977). Thus, it makes no difference here whether the Minnesota Pension Act can be considered a statute of general application. That Act was passed after both houses of Congress had passed versions of ERISA, thereby assuring early passage of a federal law and self-destruction of the Minnesota Act (§181B.17). That fact, and the ceremonial signing of the Act at the White plant site, cause one to wonder as to the intended application of the Act.

ment or termination of a pension plan and, therefore, does not impinge upon mandatory subjects of bargaining. This contention ignores realities. An employer entering into a collective bargaining agreement must consider the ultimate cost of the contract provisions he agrees to. It is for this reason that the White-UAW Pension Plan contained provisions limiting White's liability upon termination of the plan. Any state statute which purports to enlarge the employer's ultimate financial obligation beyond that which was negotiated clearly impinges upon collective bargaining.

Moreover, the State's assertion is legally incorrect. In the context of an on-going collective bargaining relationship, the *termination* of a pension plan is a mandatory subject of collective bargaining. Furthermore, it is a well established rule that employers must bargain on the impact of a business decision to close a plant or take other action materially affecting employment in a plant. *Royal Typewriter Co. v. NLRB*, 533 F.2d 1030 at 1039 (8th Cir. 1976). Under certain circumstances, the employer may even be required to bargain concerning the business decision itself. *Fibreboard Corp. v. NLRB*, 379 U.S. 203, (1964). In this case, such bargaining resulted in the continued operation of the Hopkins plant.

The State also argues (DB 22, n.45) that the principles of *Oliver* and its progenitors are not applicable here since the pension agreements cover retirees, and are not, therefore, agreements on a mandatory subject of collective bargaining, citing *Allied Chem. & Alkali Workers v. Pittsburgh Plate Glass Co.*, 404 U.S. 157 (1971). The State's position is factually inaccurate and legally unsupported. The first pension plan covering employees at the Minneapolis and Hopkins plants was established in 1950 through collective bargaining. In subsequent collective bargaining agreements the pension plan was repeatedly

amended, the last amendment prior to enactment of the Minnesota Pension Act taking place in the 1971 collective bargaining negotiations. As previously noted, the pension plan, since its original adoption in 1950, has at all times provided that pensions were payable only from the pension fund and that the Company was not liable for the payment of pensions. *Every* retiree who is now receiving a pension retired under the terms of a pension agreement containing such a provision. The fact that bargaining on pensions for employees incidentally impacts on retirees does not alter the mandatory nature of bargaining.

The State next contends that *Oliver* is applicable only to conflicts between federal labor law and state antitrust law (DB 22-24). There is no support for such a restrictive reading of *Oliver*. In the first place, *Oliver* simply applied to the National Labor Relations Act the principles announced in *Hanson* and *Taylor*, decided under the Railway Labor Act. Those progenitors of *Oliver* did not deal with antitrust laws.

Furthermore, subsequent decisions of this Court recognize *Oliver* as a holding of general application on labor law preemption. Thus, in *NLRB v. Insurance Agents*, 361 U.S. 477 (1960), the Court, citing *Oliver*, recognized that "Congress intended that the parties should have wide latitude in their negotiations, unrestricted by any governmental power to regulate the substantive solution of their differences." 361 U.S. at 488.[11] The vitality and breadth of *Oliver* were again recognized in *Lodge 76, Machinists v. Wisconsin Employment Relations Commission*, 427 U.S. 132 (1976), by the following statement:

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11. See also Cox, *Labor Law Preemption Revisited*, 85 Harv. L. Rev. 1337, 1352 (1972).

Our decisions since *Briggs-Stratton* have made it abundantly clear that state attempts to influence the substantive terms of collective-bargaining agreements are as inconsistent with the federal regulatory scheme as are such attempts by the NLRB: "Since the federal law operates here, in an area where its authority is paramount, to leave the parties free, the inconsistent application of state law is necessarily outside the power of the State." *Teamsters Union v. Oliver*, 358 U.S. 283, 296 (1959). 427 U.S. at 153.

The State (DB 25-26) claims support for its position can be found in the 5 to 4 *en banc* decision in *Amalgamated Transit Union v. Byrne*, 96 LRRM 2440 (3rd Cir. 1977). In that case the Third Circuit majority held that threats by officials of New Jersey to withdraw state subsidies to private transportation companies which agreed to include unlimited cost of living clauses in their collective bargaining agreements were not preempted by federal labor law. The decision, whether correct or not, does not support the State's position here.

At the outset the court in *Byrne* distinguished an attempt to influence private conduct by the withdrawal of subsidies from direct state regulation of private conduct. By this distinction, the court found that decisions of this Court on labor law preemption were not controlling. The court majority said:

> Moreover, Supreme Court cases on preemption in the labor field do not seem precisely on point here because they have apparently all involved direct state regulation of private conduct, whereas in the present case New Jersey has not directly commanded or prohibited the conduct of third parties but has merely sought to influence private conduct by threatening to withhold discretionary subsidies. 96 LRRM at 2442.
>
> * * * * *
>
> * * * we do not believe that New Jersey's action here constitutes the *governmental* attempt to dictate the substance of collective bargaining agreements which is forbidden by *NLRB v. Insurance Agents, supra*, and other cases. 96 LRRM at 2444.

In this case the State of Minnesota has directly commanded the conduct of third parties in direct conflict with agreements protected by federal labor law.

Indeed, the *Byrne* court distinguished its case from one which, like the present case, would be clearly preempted under *Oliver*:

> * * * It cannot be doubted that New Jersey would be barred under the Supremacy Clause from prohibiting private parties from agreeing to unlimited cost of living clauses in their collective bargaining agreements. 96 LRRM at 2443.

III. No Exception to the Labor Law Preemption Principle Is Applicable Here.

In dealing with the preemption issue in this case, the Court is not writing on a clean slate. The Court has recognized, in the face of claims of a state's right to act for the welfare of its citizens, that "Congress knew full well that its labor legislation 'preempts the field that the act covers insofar as commerce within the meaning of the act is concerned' * * *", *Bus Employees v. Wisconsin Employment Relations Board*, 340 U.S. 383, 397-8 (1951).

Before discussing the recognized exceptions to federal labor law preemption, comment should be made concerning

the astounding proposition that, by reason of the magic words, "police power", state laws relating to the "welfare", "well-being" or "economic security" of citizens are somehow excepted from labor law preemption, even if they are in conflict with conduct protected by federal labor law (SGB 9-10, 12; DB 43-44). If states had "police power" to dictate changes in collective bargaining agreements, unaffected by the imprimatur which federal law places on such agreements, the labor law preemption principle would be undermined and destroyed.

The police power argument asserted by the Solicitor General and the State has been rejected again and again by this Court, as illustrated by the following cases.

In *Erie R.R. Co. v. New York*, 233 U.S. 671 (1914), the Court held that a New York statute setting lower maximum hours of work for railroad telegraph operators than the maximum hours permitted by the federal Hours of Service Act, being in conflict with federal law, could not be upheld as an exercise of the state's police power. The Court said:

> [W]e considered it elementary that the police power of the State could only exist from the silence of Congress upon the subject and ceased when Congress acted or manifested its purpose to call into play its exclusive power. 233 U.S. at 682.

In *Railway Employes' Dept. v. Hanson*, 351 U.S. 225 (1956), the Court expressly held that the police power of the state to prohibit a union shop existed only "[i]n the absence of conflicting federal legislation" and that the Railway Labor Act eliminated that police power. 351 U.S. at 233. See also *California v. Taylor*, 353 U.S. 553, 568 (1957), discussed *supra* at pp. 16-17.

The only judicial support cited by the Solicitor General for his "police power" argument is a quotation (SGB 10-11)

from the opinion in *De Canas v. Bica*, 424 U.S. 351 (1976). While that quotation referred to the police power of states to regulate the employment relationship, the case did not involve labor law preemption but dealt, rather, with a claim that a California statute regulating the employment of illegal aliens was preempted by the Immigration and Nationality Act, 8 U.S.C. §1101 (INA). Two comments will serve to distinguish the case. (1) The Court recognized, 424 U.S. at 359, n.7, that "nothing remotely resembling the NLRA scheme" of "national uniformity of regulation" was to be found in the INA. (2) The Court noted, 424 U.S. at 361-2, that federal legislation had expressly approved state legislation regulating employment of illegal aliens and that federal legislation was intended to supplement such state legislation.

That *De Canas* does not affect the principles of labor law preemption is shown by the fact that later in the same term this Court decided *Lodge 76, Machinists v. Wisconsin Employment Relations Commission*, 427 U.S. 132 (1976), a major labor law preemption case, without even citing *De Canas*. *Machinists* expressly reaffirmed *Oliver*, the case upon which the Eighth Circuit's opinion is based.

The Solicitor General, in an attempt to shore up his police power argument, now claims that, at least, state legislation establishing "minimum standards" on subjects which affect the welfare of citizens is excepted from preemption. (SGB 9-10, 19-20). There is no support for this transparent attempt to avoid the impact of *Oliver*. Regulation by a state which interferes with collective bargaining and the performance of labor agreements is not permitted simply because the interference is labeled the establishment of minimum standards. As this Court has said, "Congress intended that the parties [to collective bargaining negotiations] should have wide latitude in their negotiations, un-

restricted by *any governmental power to regulate the substantive solution of their differences*". *NLRB v. Insurance Agents*, 361 U.S. 477, 488 (1960). (Emphasis supplied). The Court recently added that "state court jurisdiction cannot be permitted where there is a realistic threat of interference with the federal regulatory scheme". *Farmer v. Carpenters*, 430 U.S. 290, 305 (1977). The threat of interference is not removed by calling the interference "minimum standards". Moreover, the Minnesota Pension Act does not set minimum standards but fundamentally restructures the liability rules of an employer under his pension agreement. Thus, there is no minimum term of funding provided when the Minnesota Pension Act comes into play; instead the Act eliminates deferred funding altogether in the event of a plant closing or plan termination.

While there are exceptions to federal labor law preemption, such exceptions are very narrow and limited. As stated in *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236 (1959), state regulation is permitted only where the activity regulated is a "merely peripheral concern" of federal labor law, or where the regulated conduct concerns interests "deeply rooted in local feeling and responsibility." 359 U.S. at 243-244. The scope of these exceptions is discussed in *Lodge 76, Machinists v. Wisconsin Employment Relations Commission*, 427 U.S. 132 (1976), at 136-8.

As previously noted, the first exception is clearly inapplicable to the subject of collective bargaining on pension obligations, because bargaining over such a major bargaining issue is critical, not peripheral, to the collective bargaining process. A state statute which modifies and nullifies pension provisions in a collective bargaining agreement is a direct, not a peripheral, interference with a right actually, not just arguably, protected by federal labor law.

The second exception, as decribed in *Garmon*, relates to state regulation of conduct which involves "interests so deeply rooted in local feeling and responsibility that . . . we could not infer that Congress had deprived the States of the power to act". 359 U.S. at 244. This second exception, according to *Machinists*, has been applied to "[p]olicing of actual or threatened violence to persons or destruction of property". 427 U.S. at 136.

In *Local 24, Teamsters v. Oliver*, 358 U.S. 283 (1959), this Court, in holding that states could not interfere with the substantive terms of wage agreements established by collective bargaining, recognized that it did not have before it "a case of a collective bargaining agreement in conflict with a local health or safety regulation." 358 U.S. at 297. The reference, of course, was to the exception described later in that term in *Garmon* as the "local interests" exception.

The Solicitor General seeks to expand this exception to a "health, safety, *economic security and welfare* exception" (SGB 9-10, 12). The State, both in the District Court and in the Court of Appeals, argued that the "local health or safety regulation" referred to in *Oliver* applied to the Minnesota Pension Act since that legislation affected "economic welfare". This argument was rejected by both the District Court and the Court of Appeals. Although the argument was not advanced in the Jurisdictional Statement, the State in its brief on the merits (DB 40, 43-44) joins the Solicitor General in asserting that any state law affecting the "economic welfare" or "well-being" of its citizens is exempt from preemption as a "health or safety" regulation. There is no support for such an argument.

Pensions have been held to be "wages" and "other terms and conditions of employment" as those terms are

defined in the National Labor Relations Act. It is common knowledge that wage increases may be granted in lieu of an increase in fringe benefits such as pensions, paid vacations, and paid holidays; or that one fringe benefit may be given in lieu of another fringe benefit or of a larger wage increase. Clearly wages, pensions, vacation pay, holiday pay and other contract provisions are all part of the economic package negotiated in collective bargaining agreements. Each element of that package, of course, has an effect on the economic welfare of employees. See *Craig v. Bemis Company, Inc.*, 517 F.2d 677, 684 (5th Cir. 1975).

If the "health or safety" exception to preemption were considered broad enough to include an employee's economic welfare, virtually the whole range of mandatory subjects for collective bargaining would be subject to state interference and control. The exception would then engulf the rule. As stated by Mr. Justice Cardozo in *Baldwin v. G.A.F. Seelig*, 294 U.S. 511, 522-23 (1935), where this Court rejected a claim of the state of New York that it was protecting the health of its citizens in establishing minimum prices for out-of-state milk sold in New York:

> This would be to eat up the rule under the guise of an exception. Economic welfare is always related to health, for there can be no health if men are starving. Let such an exception be admitted, and all that a state will have to do in times of stress and strain is to say that its farmers and merchants and workmen must be protected against competition from without, lest they go upon the poor relief lists or perish altogether. 294 U.S. at 523. (Citations omitted).

If legislation affecting economic welfare of individuals were exempt from federal labor law preemption, the

Oliver Court would have held state antitrust laws, which materially affect the economic welfare of citizens, to be exempt from federal labor law preemption.

Where state legislation is in direct conflict with a right clearly protected under the National Labor Relations Act, such as the right to strike peacefully or the right to enforce the terms of an agreement negotiated under federal law, this Court has consistently held such legislation preempted even where it affected the welfare or, in a broad sense, the health and safety of the citizens of a state. In *Bus Employees v. Wisconsin Employment Relations Board*, 340 U.S. 383 (1951), the Court held that federal labor law preempted a Wisconsin statute prohibiting strikes in "essential public utility service", 340 U.S. at 388, even though the interruption of that service would clearly impact upon the welfare and, indeed, upon the health and safety of the citizens of the community. The Wisconsin Supreme Court, in upholding the statute, had stressed the importance of utility service to the public welfare. 340 U.S. at 388. Notwithstanding that finding, this Court held that the Wisconsin statute was preempted.

In *Bus Employees v. Missouri*, 374 U.S. 74 (1963), the Court reaffirmed its holding in the *Wisconsin Board* case. There, upon a strike by public transit employees, the Governor of Missouri, acting under authority granted him by a state statute, issued a proclamation "that the public interest, health and welfare were jeopardized by the threatened interruption" of service and, by executive order, took possession of the facilities of the transit company. 374 U.S. at 76. The Missouri statute in question defined certain public utilities as "life essentials of the people" and declared that the prospect of strikes in such utilities was "a threat to the welfare and health of the people".

374 U.S. at 78. This Court, in holding the statute preempted, did not question the finding of a threat to health and welfare and, in fact, found it unnecessary to comment on the finding. Instead, the Court said:

> In forbidding a strike against an employer covered by the National Labor Relations Act, Missouri has forbidden the exercise of rights explicitly protected by §7 of that Act. Collective bargaining, with the right to strike at its core, is the essence of the federal scheme. As in *Wisconsin Board*, a state law which denies that right cannot stand under the Supremacy Clause of the Constitution. 374 U.S. at 82.

The Court noted that its holding did not affect the right of a state "to deal with emergency conditions of public danger, violence, or disaster . . ." 374 U.S. at 83, referring, obviously, to the "local interests" exception to preemption.

These authorities demonstrate that the so-called "health or safety" exception to preemption is extremely limited. See also *United Air Lines, Inc. v. Industrial Welfare Commission*, 211 Cal. App. 2d 729, 28 Cal. Reptr. 238 (1963), reviewing in detail the authorities on the subject and holding that state regulation of wages and fringe benefits is not exempt from labor law preemption as a local health or safety regulation.

Farmer v. Carpenters, 430 U.S. 290 (1977), does not support the State's position. In *Farmer*, as in *Linn v. Plant Guard Workers*, 383 U.S. 53 (1966), the prosecution of a state court civil action against a union for damages resulting from "outrageous conduct" intentionally carried on to damage an individual in his reputation and property was held to be permissible. What the State fails to note (DB 40, 43) is the holding of this Court that such out-

rageous conduct is not an activity protected by federal labor law. Therefore, prosecution of a state court suit will not result in state regulation of conduct that Congress intended to protect under federal labor law. 430 U.S. at 298, 302. By contrast, the White-UAW pension agreements are clearly protected by federal labor law, as this Court has made clear in *Oliver*, *Hanson*, *Taylor* and other cases. Moreover, the state action permitted in *Farmer* had little potential for interference with the federal scheme. 430 U.S. at 304-6.

In *Farmer* the Court carefully noted that the "peripheral concern" and "local interests" exceptions to federal labor law preemption "in no way undermine the vitality of the pre-emption rule," 430 U.S. at 297, and that "state court jurisdiction cannot be permitted where there is a realistic threat of interference with the federal regulatory scheme". 430 U.S. at 305. State legislative activity is equally impermissible. The decision in *Farmer* fully supports the judgment of the Court of Appeals in this case.[12]

The attempt to treat the Minnesota Pension Act as a health or safety regulation exempt from labor law preemption is unsound and is unsupported.

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12. The State (DB 41-44) now chooses to rely upon cases upholding the grant by some states of welfare benefits and unemployment compensation to striking employees against claims that such state action was preempted. The decisions which the State cites held either (i) that the impact of such state action on collective bargaining is so insubstantial as to be a matter of merely peripheral concern of federal labor law or (ii) that Congress had made it clear that this was a matter it intended to leave to the states. Relevant legislative history is reviewed in detail in *N.Y. Telephone Co. v. N.Y. Dept. of Labor*, 96 LRRM 2921 (2nd Cir. Nov. 9, 1977). We need not discuss here whether these decisions on payment of benefits to strikers are correct. Suffice it to say that the impact of the Minnesota Pension Act on the White-UAW pension agreements is direct and substantial, not tangential. There is, of course, no congressional approval of such state action.

IV. Congress Did Not, by the Welfare and Pension Plans Disclosure Act or Otherwise, Leave to the States Authority to Enact Legislation Modifying or Nullifying Pension Terms in Collective Bargaining Agreements.

Defendant and the Solicitor General claim that Congress, in enacting the Welfare and Pension Plans Disclosure Act in 1958, 29 U.S.C. §§301, *et seq.* (hereinafter the "Pension Disclosure Act"), clearly indicated its intention to leave to the states power to enact legislation modifying and nullifying the pension provisions of collective bargaining agreements. That argument suffers from the same weakness inherent in their arguments for a broad police power exemption and for expansion of the local interests exception to protect all state laws dealing with economic welfare or well-being of citizens. The common weakness is that each proposition proves too much—each would destroy federal labor law preemption.

The State and the Solicitor General reluctantly admit that the Pension Disclosure Act did not affirmatively grant any power to the states, but only "left to" the states power they already had (DB 32; SGB 12-16). The savings clause of the Pension Disclosure Act relied on by the State compels such a reading:

> The provisions of this chapter * * * shall not be held to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of the United States or of any State affecting the operation or administration * * * of any such plan contrary to any such law. 29 U.S.C. §309(b).

The Solicitor General and the State erroneously assume that, before the Pension Disclosure Act was passed in 1958, states had the power to interfere with collectively bargained pension plans. But by 1958 both the Railway Labor Act and the NLRA had been in effect for many years and this Court had developed the labor law preemption principle. In 1956, this Court, in *Railway Employes' Dept. v. Hanson*, 351 U.S. 225 (1956), held that "[a] union agreement made pursuant to the Railway Labor Act * * * could not be made illegal or vitiated by any provision of the laws of a State." 351 U.S. at 232. The Court reaffirmed that holding in *California v. Taylor*, 353 U.S. 553 (1957). *Local 24, Teamsters v. Oliver*, 358 U.S. 283, decided in 1959, simply applied to the National Labor Relations Act the labor preemption principle enunciated in *Hanson*, and held that "the paramount force of the federal law remains even though it is expressed in the details of a contract federal law empowers the parties to make". 358 U.S. at 296-97.

Thus, prior to the Pension Disclosure Act, states had no more power to regulate the substantive provisions of negotiated pension plans than they had to regulate other substantive provisions of collective bargaining agreements, such as the amount of paid vacations for employees, the number of paid holidays, the terms under which leaves of absence would be granted, or the rules governing lay-off or discharge of employees. This argument of the State and the Solicitor General has no more validity than does their argument that by use of the police power or a general welfare exception to the preemption principle states can regulate substantive terms of collective bargaining agreements. States have not been and cannot be permitted to so undermine the preemption principle.

Therefore, at the time the Pension Disclosure Act was enacted, state laws regulating substantive terms of collectively bargained employment relationships could only avoid the then existing doctrine of federal preemption by a clear grant from Congress of a right to interfere directly with collective bargaining and collective bargaining agreements. Congress had demonstrated its capacity to make such a clear and explicit grant of regulatory power to the states in the labor field when in fact it intended to do so. The NLRA itself contains many provisions which explicitly sanction state regulation in specific areas. *See*, for example, sections 10(a), 29 U.S.C. §160(a) (authorizing the National Labor Relations Board to cede jurisdiction to state labor relations agencies), 14(b), 29 U.S.C. §164(b) (authorizing state right-to-work laws), and 14(c)(2), 29 U.S.C. §164(c)(2) (authorizing the NLRB to cede certain jurisdiction to states). And this Court has made it clear that claimed exceptions to preemption in the area of labor law must be clear to be recognized. In *Bus Employees v. Wisconsin Employment Relations Board*, 340 U.S. 383, 397-8 (1951), the Court, in holding preempted a state statute prohibiting strikes in utilities furnishing esssential services to the public, said:

> * * * Congress [has] demonstrated that it knew how to cede jurisdiction to the states. Congress knew full well that its labor legislation "preempts the field that the act covers insofar as commerce within the meaning of the act is concerned" and demonstrated its ability to spell out with particularity those areas in which it desired state regulation to be operative. (Footnotes omitted.)

The State and the Solicitor General ignore this very relevant pronouncement. See also *California v. Taylor*, 353 U.S. 553, 564-5 (1957).

Clearly, Congress has not, either in the Pension Disclosure Act or any other act, authorized state interference

with the pension arrangements (or the arrangements on the other terms and conditions of employment mentioned above) worked out by parties to a collective bargaining agreement.

A review of the statute and its legislative history further indicates that Congress did not intend to preserve legislation like the Minnesota Pension Act. The Court of Appeals so held (A-127-129); 545 F.2d at 608-9. This conclusion is required by a consideration of the particular problem Congress dealt with in the Pension Disclosure Act and by reference to specific evidence in the statute and legislative history.

First, the Pension Disclosure Act was enacted to attack corrupt management of the substantial sums of money that are invested in welfare and pension plans. Some of the specific abuses were embezzlement, improper insurance commissions and service fees, kickbacks, wasteful switching of policies, and collusion between union, management, and insurance officials. *See generally* 104 Cong. Rec. 7049 (1958) (Remarks of Senator John F. Kennedy); 104 Cong. Rec. 7060 (1958) (Remarks of Senator Douglas).

As the Court of Appeals correctly pointed out, the Pension Disclosure Act was *not* directed at the substantive terms of pension plans (A-127-128); 545 F.2d at 608:

> The legislative history emphasizes the limited purpose of this legislation and *that the Act's provisions do not affect substantive terms of employee benefit plans.* (Emphasis added).

Senator John F. Kennedy, one of the major proponents of the Pension Disclosure Act, recognized this when he said:

[*S. 2888*] *interferes in no way with the right of contract or the form the plan will take.* It merely provides that whoever manages the plan will make a report of the financial operations and reserves in the plan. 104 Cong. Rec. 7052 (1958). (Emphasis added).

In *Sylvania Electric Products, Inc. v. NLRB,* 358 F.2d 591, 592 (1st Cir.), *cert. denied,* 385 U.S. 852 (1966), the court made this point quite well when it said:

The Act does not purport to expand the scope of "wages, hours, and other terms and conditions of employment" under the National Labor Relations Act. *In fact, it does not purport to affect the course of collective bargaining relations at all.* Rather, the Disclosure Act seems designed to protect the rights of employees covered by actual, not proposed, welfare programs, by compelling the employer who administers them to make disclosures of the sort owed by a fiduciary to *cestuis que trustent.* 358 F.2d at 592. (Emphasis added).

Thus, the Pension Disclosure Act was enacted to deal with corruption and mismanagement of funds, and not to deal with the substantive terms of pension plans. The federal statute emphasized a reporting and disclosure mechanism to attack the problems of corruption and mismanagement. But Congress recognized that the states had traditionally used other means to attack corruption and mismanagement. Thus Congress made sure that its limited measure did not hamper the states' ongoing efforts to catch thieves, prevent insurance abuse and require proper auditing procedures.[13]

Second, it is clear, from the language of the savings clause and the legislative history pertaining to that clause, what state laws Congress intended to save. The statute

13. Contrary to the suggestion of the Solicitor General (SGB 16-17, n.15), federal substantive law applies in suits to enforce collectively bargained pension agreements. *Teamsters v. Lucas Flour Co.,* 369 U.S. 95 (1962).

refers to state laws "affecting the operation or administration" of pension plans. The words "operation and administration" clearly relate to the mechanics of implementing and managing a plan whose terms have already been established. That language simply cannot be strained to include the imposition, modification or destruction of the substantive terms of a plan. On the face of the statute, therefore, the argument of the State and the Solicitor General fails.

The pertinent Senate Report makes it clear that the only state regulation contemplated by the Act was that relating to "insurance" and "trusts" and "other phases of [the] operations" of pension plans. That Senate Report, in part, reads:

* * * [The Pension Disclosure Act] is designed to place the primary responsibility for the policing and improved operations of these plans upon the participants themselves, with a minimum of interference in the natural development and operation of such plans, *to leave to the States the detailed regulations relating to insurance, trusts, and other phases of their operations,* and to place the least possible burden by way of cost and otherwise upon the plans and upon the Federal Government. S. Rep. No. 1440, 85th Cong., 2d Sess. (1958), 1958 *U.S. Code Cong. and Adm. News,* 4137, 4154. (Emphasis added).

The Eighth Circuit recognized the types of state laws that Congress meant to preserve and read Section 309(b) accordingly:

Clearly, the preemption disclaimer provision of the Disclosure Act, § 309(b), relates to *state statutes governing those obligations of trust undertaken by persons managing, administrating, or operating employee benefit funds, the violation of which gives rise to civil*

and criminal penalties. Accordingly, no warrant exists for construing this legislation to leave to a state the power to change substantive terms of pension plan agreements. (A-129); 545 F.2d at 609. (Emphasis added).

In 1958 no one had ever heard of legislation like the Minnesota Pension Act. At that time, Congress preserved trust law and state legislation aimed at arresting and prosecuting corruption.

Thacher v. United Construction Workers, 10 N.Y.2d 439, 180 N.E.2d 245, 224 N.Y.S.2d 657 (1962), to which the State refers (DB 33), makes clear the limited nature of state regulation permitted under the Pension Disclosure Act and the inapplicability of the savings clause of that Act to the statute involved in the present case. *Thacher* involved a very narrow type of state regulation authorizing the state superintendent of insurance to take possession of and liquidate bankrupt trust funds. This was state regulation classically of the kind permitted by the savings clause of the Pension Disclosure Act, that is, regulation pertaining to insurance and trusts and the administration of pension funds. What is most significant about *Thacher* for our purposes is that the court in *Thacher* expressly acknowledged that the state regulation before it was permitted only because it did not, as does the Minnesota Pension Act, prevent the carrying out of the terms of a collective bargaining agreement. Thus, the court in *Thacher*, after noting that *Oliver* meant that "no State statute could be applied to prevent the carrying out of the collective bargaining agreement," held that the regulation before it could be upheld since "the State Insurance Department is doing nothing to prevent the 'carrying out' of the Welfare Fund agreement but is exercising a power as to liquidation." 10 N.Y.2d at 445, 180 N.E.2d at 247, 224 N.Y.S.2d at 661.

The State and the Solicitor General suggest that the enactment by Congress, on September 2, 1974, of the Employee Retirement Income Security Act (ERISA), 29 U.S.C. §1001, *et seq.*, somehow proves that Congress had earlier ceded to the states authority to control substantive terms of collectively bargained pension plans. The State pressed the same argument before the District Court and the Court of Appeals without success. ERISA was passed and became effective *after* the Minnesota Pension Act and *after* the termination of the Plan. It is impossible to see how a decision by Congress to enact pension legislation can, in itself, be said to sanction similar state legislation in an area which Congress has otherwise preempted.[14] State legislation is preempted even where it covers the same subject as a federal statute. Thus, in *Connell Construction Co. v. Plumbers & Steamfitters*, 421 U.S. 616 (1975), *rehearing denied*, 423 U.S. 884, this Court held that a state antitrust law was preempted by federal labor law even though the state law prohibited conduct which was also illegal under federal antitrust law. 421 U.S. at 635-36.

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14. The State suggests that ERISA interferes with the terms of pension plans more directly than the Minnesota Pension Act does. This is an inaccurate statement as a relevant example will demonstrate. The primary impact of the Minnesota Pension Act against White is to nullify the contractual provisions of the White-UAW pension agreements limiting White's obligations to following a thirty-five year funding schedule so long as the pension plan was in effect. As to funding, ERISA provides that for plans in existence on January 1, 1974, the past-service liability of the plan must be funded over a forty-year period, 29 U.S.C. §1082(b)(2), but also provides that, in the case of union negotiated plans, ERISA funding requirements will apply only to plan years beginning after the collective bargaining agreement in effect on January 1, 1974 terminates or plan years beginning after 1980, whichever is earlier, 29 U.S.C. §§1061(c)(1) and 1086(c)(1). ERISA thus set funding schedules less burdensome than the 30 to 35 year funding schedules in common practice and, even as to the 40 year funding provision, gave parties to collective bargaining agreements the right to negotiate matters of pensions before fixed ERISA funding obligations became effective.

Nor can Congress' deferral of the date when ERISA preempted state legislation be considered as recognizing a preexisting power of states to enact pension legislation which otherwise conflicts with federal labor law. The ERISA provision in question merely postpones the preemptive effect of ERISA itself until January 1, 1975, thereby preserving valid pre-1975 state-created claims. It does not, and cannot, in bootstrap fashion, validate statutes whose application is barred for reasons independent of ERISA, in this case the preemptive effect of federal labor law. Further, as this Court has frequently observed, "the views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one." *United States v. Price*, 361 U.S. 304, 313 (1960). *See also, Waterman Steamship Corp. v. United States*, 381 U.S. 252, 269 (1965); *United States v. United Mine Workers*, 330 U.S. 258, 282 (1947).

If a state could enforce statutes modifying or abrogating negotiated pension plans, the balance established by Congress in respect of labor matters would be upset.[15] If that were to happen, then, as noted by the Court of Appeals, "in another day a differently-minded state legislature could take away from working people contract benefits obtained through hard, fair bargaining." (A-130); 545 F.2d at 610.

CONCLUSION

By reason of the passage of ERISA, the precise issue before the Court may not arise again, but the principles developed by the Court governing the application of federal labor law preemption will be called into play time and time again. The arguments advanced by the State and the

15. See Cox, *Labor Law Preemption Revisited*, 85 Harv. L. Rev. 1337, 1352 (1972).

Solicitor General are totally at odds with the decisions of this Court on the nature and scope of federal labor law preemption, and cannot be accepted unless this Court is prepared to undermine the labor law preemption principle.

We respectfully submit that the Court should affirm the judgment entered in the cause by the United States Court of Appeals for the Eighth Circuit.

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FOR ARGUMENT

IN THE

Supreme Court of the United States

October Term, 1977

No. 76-1184

E. I. MALONE, Commissioner of Labor and Industry for the State of Minnesota,
Appellant,

vs.

WHITE MOTOR CORPORATION and WHITE FARM EQUIPMENT COMPANY,
Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

REPLY BRIEF

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REPLY BRIEF

ARGUMENT

I. THE MINNESOTA PENSION ACT IS VALID UNDER THE *OLIVER* DOCTRINE.

White Motor relies upon a mischaracterization of the effect of the Minnesota Pension Act[1] on the White Motor pension plan and on an exceptionally expansive interpretation of *Local 24, Teamsters v. Oliver*, 358 U.S. 283 (1959) in urging this Court to rule the Minnesota Pension Act preempted.

A. White Motor Misstates The Effect Of The Minnesota Pension Act.

White Motor and the United States Chamber of Commerce[2] assert that the Minnesota Pension Act operates so as to radically change the bargained-for pension plan. Indeed, the Chamber asserts that the Minnesota Act provides for "state mandated benefits." Chamber of Commerce Br. at 10 n. 8; *see* White Br. at 8.

[1] White Motor also alleges that the Minnesota Pension Act was directed solely at it. (White Br. at 7, 19 n. 10) This argument was not accepted by either of the courts below and has been explicitly rejected in Fleck v. Spannaus, Civ. No. 3-75-178 (D. Minn., Sept. 2, 1977, three-judge court), where White Motor participated as an amicus curiae. That court said

> It seems clear that the problem of plant closure and pension plan termination was brought to the attention of the Minnesota legislature when the Minneapolis-Moline Division of White Motor Corporation closed one of its Minnesota plants and attempted to terminate its pension plan. However, Allied's contention that the Pension Act was aimed solely at White Motor retirees is totally unfounded. There is absolutely no evidence from the legislative history or debates on the Pension Act to support Allied's claim that the Act was aimed solely at White Motor Corporation.

[2] The United States Chamber of Commerce has filed a Motion For Leave to File A Brief Amicus Curiae and has submitted a Brief Amicus Curiae. Since the State does not yet know whether the Chamber of Commerce will be allowed to file its brief, the State will address several of the main points outlined in the Chamber of Commerce brief.

This is incorrect. The Minnesota Pension Act does not mandate any benefits. The decision of whether to establish a pension plan and specified benefit levels in such a plan are exclusively matters between the employer and the employees. The Minnesota Act simply provides that once specified benefit levels are agreed to in a pension plan, covered employees are to receive those expected benefits which they are entitled to.[3]

The Act, in the context of this case, serves to give effect to the specified benefit levels agreed to in the pension plan while nullifying the company's liability disclaimer which itself, if given effect, operates to render meaningless the benefits delineated in the pension plan. There is obviously an internal inconsistency in the White Motor pension plan because on the one hand it affirmatively provides for specified benefit levels, thus apparently promising workers pension benefits, but on the other hand absolves the company of all liability even though the plan is seriously underfunded.[4]

White Motor also contends that since the Minnesota Act provides for slightly different vesting provisions than the pension plan, the Act has the "effect of destroying [the] pension agreements." (White Br. at 13). This is hyperbole. The Min-

[3] Pension benefits are deferred compensation. *See* Daniel v. Teamsters Union, 561 F.2d 1223, 1232 (7th Cir. 1977); Craig v. Bemis Co., Inc., 517 F.2d 677, 680 (5th Cir. 1975); Inland Steel Co. v. NLRB, 170 F.2d 247 (7th Cir. 1948), *cert. denied*, 336 U.S. 960 (1949); Hurd v. Hutnik, 419 F.Supp. 630 (D.N.J. 1976).

[4] *See generally* discussion in Brief For the American Federation of Labor and Congress of Industrial Organizations as Amicus Curiae at 22. (The AFL-CIO has filed a Motion For Leave To File A Brief Amicus Curiae and has submitted a Brief Amicus Curiae.)

White Motor's claim that the liability disclaimer is based on a quid pro quo bargaining agreement, (White Br. at 12-13) is highly speculative. Although White Motor does not cite any authority for its bald assertion, it presumably is relying on the affidavit of H. Herbert Phillips, a company Vice-President. App. at 21-32. Significantly, even White Motor does not claim that there was any quid pro quo arrangement when the liability disclaimer was inserted into the pension plan in 1950.

nesota Act grants workers vested rights after ten years of employment; whereas the pension plan granted vested rights if a worker had ten years of service and was at least 40 years of age. Not more than 44 terminated employees out of 1518 individuals potentially covered by the Act had 10 years of service but had not attained age 40 at the time of termination. App. at 92. Thus, the difference in vesting times between the Act and the pension plan is minor and involves relatively few terminated workers.[5]

B. *Oliver*, Unlike The Minnesota Act, Involved A State Antitrust Law Which Virtually Destroyed The Essence Of The Bargaining Agreement.

White Motor blithely asserts that *Oliver* is "simple and easy" to apply (White Br. at 18) and asks this Court to give an uncritical adherence to *Oliver's* broadest implications. However, a balanced reading of *Oliver* in conjunction with an understanding of the effect of the Minnesota Pension Act on the White Motor Pension Plan establishes that the effect of the Ohio antitrust law in *Oliver* was far more damaging

[5] White Motor further argues that the Minnesota Pension Act "renders meaningless" the Guarantee letter and claims that the Minnesota Pension Act "requires an immediate satisfaction of a pension funding charge in excess of $19,000,000" (White Br. at 13). Those assertions are incorrect.

Under the Minnesota Act, the pension funding charge must ultimately take into account any partial funding the Company has already agreed to, *see* Minn. Stat. § 181B.03-06 (1976), and the Company's approximately $7,000,000 commitment, *see* App. at 172-73, will, if paid, be subtracted from the initial pension funding charge of $19,000,000. In addition, the new pension plan created for the Hopkins plant, *see* App. at 111 n. 5, and payments made due to the arbitrators award will further substantially reduce the initial funding charge. It appears that the funding charge will ultimately be approximately $6,000,000-$8,000,000. Furthermore, the pension funding charge cannot be certified or become due for payment until the completion of the administrative proceedings which have been held in abeyance pending determination of this appeal. Minn. Stat. § 181B.09-11 (1976); State Br. at 8-9.

to the essence of the bargaining agreement than the effect of the Minnesota Pension Act on the pension plan herein.

In *Oliver*, the Ohio courts' application of the state antitrust law operated to absolutely preclude negotiation or agreement on terms and conditions regulating minimum rental and other lease terms when a truck was leased to a carrier by an owner who then drives his truck for the carrier. This provision was incorporated into the bargaining agreement to preclude employers from circumventing the agreed upon wage scale by paying owner-drivers below market lease amounts or insufficient amounts for maintenance. Thus, the provision of the bargaining agreement struck down by the Ohio courts was integrally tied into the wage package of the bargaining agreement and therefore had the effect of eviscerating the entire negotiated wage scale. It was because of this drastic interference with the very heart of the bargaining agreement that the *Oliver* Court reversed the Ohio courts and struck down the state antitrust law.

The Minnesota Pension Act, however, contrary to White Motor's and the Chamber of Commerce's assertions does not go to the heart of the bargaining agreement nor frustrate the framework for the bargaining process established by Congress. The Act allows the parties freely to decide whether they wish to establish a pension plan and, if so, to specify benefit levels. The Act requires that a company which bargains to pay a certain level of benefits must pay those benefits notwithstanding any inconsistent disclaimer in the plan to the contrary.[6]

[6] *See also* discussion of vesting rights *supra*; State Br. at 19 n. 41.

White Motor has completely mischaracterized the State's argument concerning mandatory subjects of collective bargaining, *see* White Br. at 20; the State refers the Court to the State Br. at 22 n. 45. In addition, White has misstated the State's argument concerning the relationship of the Minnesota Pension Act to the collective bargaining process, *see* White Br. at 14-15. For the State's analysis on this point, *see* State Br. at 16-28.

II. THE PENSION DISCLOSURE ACT EXPRESSLY RESERVED TO THE STATES AUTHORITY TO REGULATE THE ADMINISTRATION AND DISSOLUTION OF PENSION PLANS.

White Motor asserts that the provision in the Welfare and Pension Plans Disclosure Act of 1958, 72 Stat. 997, (Pension Disclosure Act) allowing the states to retain the power to regulate the "operation or administration" of pension plans, § 10b, 72 Stat. 1003, should be narrowly construed so as to oust the states from regulating substantive aspects of pension plans. (White Br. at 32-40). In the alternative, White Motor asserts that this Court took that power from the states in *Railway Employees' Dept. v. Hanson*, 351 U.S. 225 (1956) and *California v. Taylor*, 353 U.S. 553 (1957). These arguments reflect a fundamental misunderstanding of the deference this Court should give to expressed Congressional intent.

The State initially observes that White Motor and the Chamber of Commerce claim that state power to regulate any provisions of collectively bargained for pension plans is preempted absent "unambiguous congressional intent." (Chamber of Commerce Br. at 16; White Br. at 34-35). Although the state believes that the Pension Disclosure Act does indicate in clear and unambiguous terms that states had the power prior to ERISA to regulate certain aspects of private collectively bargained for pension plans, the Chamber of Commerce and White Motor have misstated the basic labor law preemption standard to be applied on matters of Congressional intent.

In cases involving labor law preemption, this Court has made it clear that "[t]he purpose of Congress [is] the ultimate touchstone[,]" *Retail Clerks v. Schermerhorn*, 375 U.S. 96, 103 (1963), and

> [t]he constitutional principles of pre-emption, in whatever field of law they operate, are designed with a common end in view: to avoid conflicting regulation of conduct by various official bodies which might have some authority over the subject matter.

Amalgamated Ass'n of Street Employees v. Lockridge, 403 U.S. 274, 285-86 (1971).

Furthermore, "affirmative indications" of congressional intent not to preempt are sufficient if congressional intent is not entirely clear.[7] *See Lockridge, supra*, 403 U.S. at 297; *see also San Diego Building Trades Council v. Garmon*, 359 U.S. 236, 243-45 (1959); *Allen-Bradley Local v. Wisconsin Employment Relations Board*, 315 U.S. 740, 748-49 (1942).

White Motor contends that by enacting the Pension Disclosure Act, Congress did not by that Act address the problem of the substantive aspects of employee pension plans. (White Br. at 35). That is, of course, precisely the point of the State's argument; Congress, although fully aware of the problems raised by inadequate funding and vesting provisions in private pension plans, *see* State Br. at 29-31, only chose to require certain limited types of disclosure in the Pension Disclosure Act. It affirmatively and explicitly left to the states the power to regulate private pension plans. Section 10(b), 72 Stat. 1003.

Indeed, not only does the Pension Disclosure Act expressly provide for state regulation of pension plans, but it actually encourages such regulation. For example, section 10(a) of the Act provided for the filing of certain reports required by the

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[7] Indeed, in considering Congressional intent, the Chamber of Commerce fashions a rule of uniformity which would virtually read principles of federalism out of the United States Constitution. But as Mr. Justice White and the Chief Justice have noted, "Congress has not federalized the entire law of labor relations." Lockridge, *supra*, 403 U.S. at 309 (White, J., dissenting).

Act with state regulatory agencies "to permit a coordination between the Federal and State Governments in carrying out their respective obligations." S. Rep. No. 1440, 85th Cong. 2nd Sess., 1958 U.S. Code Cong. and Admin. News 4137, 4168.[8]

White Motor's assertion that the only state regulation contemplated by the Pension Disclosure Act was that relating to the "mechanics of implementing and managing a plan" is utterly without support. Such a narrow and contorted reading of the congressional intent exemplified in the Pension Disclosure Act is not supported by the express language of section 10(b) of the Act and its legislative history nor the legislative history of ERISA. *See generally* State Br. at 28-39. Furthermore, White Motor's constricted approach to congressional intent is not consonant with the reasoned deference to expressed congressional intent mandated by this Court and the presumption of validity that attaches to all legislation including state legislation.[9]

Finally, White Motor claims that state regulation of pension plans was preempted prior to enactment of the Pension Disclosure Act by virtue of this Court's decisions in *Railway Employees' Dept. v. Hanson*, 351 U.S. 225 (1956) and *California v. Taylor*, 353 U.S. 553 (1957). However, neither *Hanson* nor *Taylor* had anything whatsoever to do with pen-

[8] *See generally* discussion in Brief For the American Federation of Labor and Congress of Industrial Organizations as Amicus Curiae at 22.

[9] Indeed, White Motor's concession that the states, prior to ERISA, had the power to regulate some aspects of bargained-for pension plans is curious. A review of the White Motor pension plan reveals that much of it is devoted to such things as administration, term definitions, appointment of actuaries, funding, etc. To attempt to sort out substantive provisions from administrative or mechanical provisions as White Motor apparently suggests is virtually impossible. Indeed, the section of the Plan headed "Administration of Plan," relates to such items as indemnity, disbursement of funds, etc.; *see* § 7 of Plan.

sion regulation. Rather, this Court held in *Hanson* that a "right to work" provision in the Nebraska Constitution was preempted by the Railway Labor Act, 45 U.S.C. § 151, *et seq.*, because of a specific provision of the Act that both expressly authorizes the very types of contract provisions prohibited by Nebraska law and expressly preempts any state law to the contrary. *See* 45 U.S.C. § 152, subd. 11. There was, then, a direct and irreconcilable conflict between the state and federal law that could be resolved only by preemption. Additionally, the substance of the provision was related directly to a matter of fundamental concern in federal labor policy—the right to join or not join a union.

California v. Taylor, 353 U.S. 553 (1957), held that a state-owned railroad was subject to the Railway Labor Act and that, as such, state civil service laws that prohibited state employees from organizing and collectively bargaining were preempted from application to the railroad's employees. Thus, as in *Hanson*, the state regulation prohibited the very activity that is the subject of federal labor policy.

The State cannot perceive how either of these cases in any way constricted the power of the states to regulate pension plans. Indeed, there is absolutely no evidence in the legislative history of the Pension Disclosure Act, or anywhere else, that Congress thought the *Hanson* or *Taylor* cases preempted the state regulation of pension plans that Congress reaffirmed in the Pension Disclosure Act. There was thus no reason for Congress to affirmatively cede such power to the state pursuant to 29 U.S.C. § 164(c)(2) as White Motor suggests (White Br. at 34) since the Congress obviously believed that states already possessed this regulatory power.

III. THE MINNESOTA PENSION ACT IS AN APPROPRIATE EXERCISE OF THE STATE'S POLICE POWER TO PROTECT WORKERS IN THE CONTEXT OF THE EMPLOYMENT RELATIONSHIP.

Conjuring up a litany of woes certain to result if this Court reaffirms Minnesota's exercise of its traditional police power to protect workers in the context of the employment relationship, White Motor and the Chamber of Commerce contend that this police power argument has been rejected by the Court in *Bus Employees v. Missouri*, 374 U.S. 74 (1963) and *Bus Employees v. Wisconsin Employment Relations Board*, 340 U.S. 383 (1951). These two cases are singularly inapposite.

Both cases involved state attempts to absolutely prohibit strikes in bus companies based on the argument that the welfare of the general citizenry was at stake. Thus, although bus service was unquestionably important to the general public, that interest was outweighed by the nullification of one of labor's most cherished rights under the NLRA, the right to strike. Significantly, the states were not acting to protect the workers but rather were articulating a concern for the general public.

However, protection for the general public was not the traditional police power concept reaffirmed in *DeCanas v. Bica*, 424 U.S. 351, 356 (1976) where the Court ruled that the Immigration and Nationality Act did not preempt a California provision prohibiting an employer under certain circumstances from employing illegal aliens. In *DeCanas*, this Court spoke directly to the police power of the state to regulate "the employment relationship to protect workers[.]" 424 U.S. at 356. The two *Bus Employees* cases obviously involved neither the "employment relationship" nor were the states' actions therein

designed to "protect workers." The Minnesota Pension Act, however, is keyed directly into the employment relationship at the point it terminates and protects workers from the devastating effects of the termination of inadequately funded pension plans. *See* State Br. at 5-7 and n. 5.

White Motor's contention that *DeCanas* is not relevant since it did not involve the NLRA, ignores reality. In recognizing the police power of the states in areas involving the "employment relationship," this Court certainly was not oblivious to the fact that a substantial percentage of workers are unionized or may desire to become unionized and that the NLRA, therefore, permeates the entire employment relationship.[10]

White Motor and the Chamber of Commerce also contend that reaffirming the state's traditional police power to protect workers in the area of the employment relationship would eviscerate labor law preemption. (White Br. at 28; Chamber of Commerce Br. at 15-25 and n. 14.) They arrive at this conclusion by suggesting the novel proposition that states could legislate maximum standards as well as minimum standards under the police power doctrine.

However, the enactment of certain basic minimum standards by a state is at the heart of its police power "to protect workers." Such minimums[11] leave the parties free to bar-

[10] Similarly, White's claim that this Court's failure to cite DeCanas in Lodge 76, Machinists v. Wisconsin Employment Relations Commission, 427 U.S. 132 (1976), presupposes that DeCanas "affect[ed] the principles of labor law preemption." (White Br. at 25). That is incorrect. DeCanas simply restated the traditional police power of the state in the employment relationship. Furthermore, Machinists did not involve an attempt on the part of the Wisconsin Board to "protect workers" through its police power and DeCanas was therefore inapposite to that case.

[11] *See, e.g.*, Fair Labor Standards Act, 29 U.S.C. § 218(a); Occupational Health and Safety Act, 29 U.S.C. § 667; Employee Retirement Income Security Act, 29 U.S.C. § 1001, *et seq.*; Coal Mines Health & Safety Act, 30 U.S.C. §§ 801, 953.

gain collectively from these minimums to whatever level the parties mutually agree upon. Any attempt to legislate maximums, *e.g.* in the areas of wages or pensions, hardly could be construed as legislation "to protect workers" and thus would be outside the states' police power. Furthermore, such maximums could virtually nullify the collective bargaining process.

Contrary to White Motor's statement that the Minnesota Pension Act is not actually setting "minimums" (White Br. at 26), the Act quite simply requires that minimum standards of vesting and funding be met in the event that a pension plan is terminated.

The Briefs of the Chamber of Commerce and White Motor are demands for national uniformity in all laws affecting the employment relationship because diversity of laws may make some collective bargaining "more difficult." (Chamber of Commerce Br. at 23.)

If this Court's statement in *Garner v. Teamsters*, 346 U.S. 485, 488 (1953) that the NLRA "leaves much to the states," is to retain any vitality, then under basic principles of federalism, some diversity in state laws must be accepted. Although the Chamber of Commerce and White Motor view this diversity negatively, the State submits that such diversity is at the heart of the federal-state relationship and that the nation is healthier for that diversity even if it occasionally does cause inconvenience. As Justice Brandeis once observed,

> It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.

New State Ice Co. v. Liebmann, 285 U.S. 262, 311 (1932) (dissenting opinion).

IV. CONCLUSION

For all of the foregoing reasons, and for the reasons set forth in the State's original brief to the Court and the Brief for the United States as Amicus Curiae, the decision below should be reversed.

Respectfully submitted,

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No. 76-1184

In the Supreme Court of the United States

OCTOBER TERM, 1977

E. I. MALONE, COMMISSIONER OF LABOR AND INDUSTRY FOR MINNESOTA, APPELLANT

v.

WHITE MOTOR CORPORATION AND WHITE FARM EQUIPMENT COMPANY

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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On April 18, 1977, the Court invited the Solicitor General to express the views of the United States in this case. The Government filed a memorandum urging that probable jurisdiction be noted. Probable jurisdiction was noted on October 3, 1977. This brief is an elaboration of the views of the United States.

QUESTION PRESENTED

Whether the National Labor Relations Act preempts a Minnesota statute requiring an employer, upon termination of a pension plan, to pay certain benefits, when such benefits are in excess of those specified in the collective bargaining agreement.

STATEMENT

1. The Minneapolis-Moline Company, a farm implement manufacturer, operated plants in Minneapolis and Hopkins, Minnesota, for many years. Beginning in 1955, it had collective bargaining agreements with the United Auto Workers covering production and maintenance employees. Those agreements provided for an employee pension plan (J.S. App. A-27).[1] In January 1963, White Motor Corporation purchased the assets of Minneapolis-Moline Company and succeeded to the latter's bargaining obligation to the Union and to its obligations under the pension plan (*ibid.*).[2]

The 1971 version of the plan,[3] which is pertinent to this case, provided that covered employees with

[1] "J.S. App." refers to the appendix to the Jurisdictional Statement. "J.A." refers to the joint appendix to the briefs in the court below.

[2] White Motor Corporation operated the plants through its subsidiary, White Farm Equipment Company. Both are referred to herein as "the Company."

[3] Relevant provisions of the plan are set out at J.A. A-122 to A-147.

ten years of credited service were entitled to a specified schedule of benefits upon retirement at or after age 65 (Section 6.01). Additionally, the plan provided that employees with ten years of credited service who terminated employment after the age of 40 would be entitled to draw benefits upon reaching age 65 (Section 6.03). See J.A. A-122 to A-125, A-126.

The 1971 plan contained a provision, first inserted in the 1968 plan, requiring that unpaid past service liability[4] be amortized, i.e., funded, over a 35-year period (Section 9.05) (J.S. App. A-28).

The plan also contained the following provisions:

> *Section 6.09—Source of Pensions*
>
> Pensions shall be payable only from the Fund and rights to pensions shall be enforceable only against the Fund.
>
> * * * * *
>
> *Section 6.17—No Other Benefits*
>
> No benefits other than those specifically provided for are to be provided under this Plan. No employee shall have any vested right under the Plan prior to his retirement and then only to the extent specifically provided herein.
>
> * * * * *

[4] "Unpaid past service liability" is the excess of the accrued liability of the pension fund over the present value of the fund's assets. In a continuing plan, such liability is normally covered by the employer's contributions on behalf of present employees.

Section 9.04—Rights of Employees in the Fund

> No employees, participant or pensioner shall have any right to, or interest in, any part of any Trust Fund created hereunder, upon termination of employment or otherwise, except as provided under this Plan and only to the extent therein provided. All payments of benefits as provided for in this Plan shall be made only out of the Fund or Funds of the Plan and neither the Company nor any Trustee nor any Pension Committee or Member thereof shall be liable therefor in any manner or to any extent. [J.S. App. A-28 to A-29.]

Notwithstanding these provisions, the Company agreed, in separate letters of understanding, to pay benefits amounting to $7,000,000 above the assets of the fund (J.S. App. A-29; J.A. A-148 to A-150).

2. On June 30, 1972, the Company closed the Lake Street plant in Minneapolis, and attempted to terminate the pension plan.[5] However, the Union secured an arbitration award requiring the Company to continue the plan in effect until the expiration of the collective bargaining agreement on May 1, 1974, to pay benefits pursuant to the terms of the plan until the assets of the fund were exhausted, and then to

[5] The Minneapolis plant employed about 800 workers covered by the pension plan. The Hopkins plant remained open and continues to operate under a new pension plan. J.S. App. A-3, n. 5.

pay benefits in accordance with the terms of the guarantee letters (J.S. App. A-30).[6]

Prior to the termination of the plan,[7] the Minnesota Legislature enacted the Private Pension Benefits Protection Act[8] ("Minnesota Pension Act"), which became effective on April 10, 1974. The Minnesota Pension Act imposes certain obligations on any employer who ceases to operate a place of employment or who terminates a pension plan. As described by the district court, the statute operates as follows (J.S. App. A-31 to A-32):

> Minn. Stat. Ann. §§ 181B.03-.06 imposes a "pension funding charge" directly against any employer who ceases to operate a place of employment or a pension plan. Such charge shall be equal in amount to the statutory provisions. These sections essentially provide that any employee who has completed ten or more years of credited service under a pension plan has, upon termination of that plan or of his place of employment, an automatically vested right to all pension benefits he would have received had the particular plan not been terminated or had the place of business not been closed.

[6] *White Motor Corp. and U.A.W.*, 61 Lab. Arb. 320, 328, 331. The award was upheld in *International Union, etc.* v. *White Motor Corp.*, 505 F. 2d 1193 (C.A. 8), certiorari denied, 421 U.S. 921.

[7] The Company terminated the plan on May 1, 1974, and paid the regular benefits until March 1976, when the benefits were then diminished to the levels set out in the guarantee letters (J.S. App. A-30; J.S. 5).

[8] Minn. Stat. Ann. §§ 181B.01-181B.17 (Cum. Supp. 1976).

> Minn. Stat. Ann. §§ 181B.09-.12 provide that the Commissioner of Labor and Industry, after investigation, shall certify amounts owing by an employer. That certified amount is declared, under § 181B.11, to "be a lien upon the employer's assets." The pension funding charge is used to purchase an annuity payable to the employee when he reaches normal retirement age.

Pursuant to the statute, appellant Malone notified the Company that it owed a pension funding charge of $19,150,053 (J.S. App. A-31; J.A. A-151 to A-154).

3. The Company filed suit in the district court for declaratory and injunctive relief alleging, *inter alia*, that the Minnesota Pension Act interfered with the process of collective bargaining sanctioned by the National Labor Relations Act and therefore was pre-empted by that Act.

The district court denied the Company's motion for summary judgment and a preliminary injunction (J.S. App. A-47 to A-48). In that court's view, the Minnesota Pension Act did not conflict with the National Labor Relations Act because the Minnesota Act did not " 'regulate conduct so plainly within the central aim of federal regulation involv[ing] too great a danger of conflict between power asserted by Congress and requirements imposed by state law . . .' [*San Diego Building Trades Council* v.] *Garmon* * * *." J.S. App. A-40. Moreover, the district court found that Congress, in enacting the Welfare and Pension Plans Disclosure Act of 1958, 72 Stat. 997

("Disclosure Act"),[9] contemplated that the regulation of pension plans would be left to the states (J.S. App. A-44). Finally, the district court rejected the Company's contention that *Local 24, Teamsters Union* v. *Oliver*, 358 U.S. 283 (discussed *infra*, pp. 16-19), was controlling. The district court concluded that the "inherent conflict and delicate balance which exists between labor and antitrust policy does not exist between labor policy and the regulation of pensions. Congress, in formulating its policies, has indicated that states may regulate pensions." (J.S. App. A-46.)

2. The court of appeals reversed (J.S. App. A-1 to A-25). It first noted (J.S. App. A-8):

> The Minnesota Pension Act obligations conflict with White Motor's pension plan provisions in the following respects: (1) the Act grants employees vested rights to pension benefits which are not available under the pension plan; (2) to the extent of any deficiency in the pension fund, the Act requires satisfaction of pension benefits from the general assets of the employer, while the pension plan provides that benefits shall be paid only out of the pension fund; (3) the Act does not permit employers to escape liability for funding of pension rights, but the pension plan permits White Motor to terminate the plan at any time, and in so doing end any liability for future payments to the pension fund, save those specifically guaranteed. Thus, essential features of the pension plan, deferred funding of past

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[9] See pp. 12-13 and note 11, *infra*.

> service liability coupled with limited employer liability and the power to terminate, were negated by the Pension Act. [Footnote omitted.]

The court of appeals added: "The Minnesota Pension Act directly intrudes upon the employer's substantive obligations under the pension plan, obligations arrived at freely through collective bargaining * * *" (J.S. App. A-11). Relying particularly on *Lodge 76, Machinists* v. *Wisconsin Employment Relations Commission*, 427 U.S. 132, and *Local 24, Teamsters Union* v. *Oliver*, *supra*, the court concluded, "* * * a state cannot modify or change an otherwise valid and effective provision of a collective bargaining agreement" (J.S. App. A-20).

The court of appeals further held that the Disclosure Act did not require a contrary conclusion, since "the Act's provisions [d]o not affect substantive terms of employee benefit plans" (J.S. App. A-21). The court added (J.S. App. A-23):

> Clearly, the preemption disclaimer provision of the Disclosure Act, § 309(b), relates to state statutes governing those obligations of trust undertaken by persons managing, administrating, or operating employee benefit funds, the violation of which gives rise to civil and criminal penalties. Accordingly, no warrant exists for construing this legislation to leave to a state the power to change substantive terms of pension plan agreements.

SUMMARY OF ARGUMENT

The NLRA does not preempt a state from exercising its police power to protect workers by regulating the employment relationship, as Minnesota has done here. Moreover, the Disclosure Act of 1958, which was in effect when the Minnesota Act was passed, reserved to the states the responsibility for regulating the operations of pension plans.

The court of appeals erred in relying on *Local 24, Teamsters* v. *Oliver*, 358 U.S. 283, since that decision upheld NLRA preemption of a statute which sought "specifically to adjust relationships in the world of commerce." *Id.* at 297. The Minnesota law here, by contrast, merely requires certain minimum standards of funding and vesting which the state has determined are necessary to protect the welfare of its citizens. Like valid state health regulations, it leaves to the bargaining process all questions of the extent, if any, to which the state-required minimum standards will be exceeded in particular work situations.

ARGUMENT

The National Labor Relations Act Does Not Preclude A State From Regulating Collectively Bargained Pension Plans To Insure That Employees Are Afforded A Minimum Level Of Benefits Upon Termination Of Such Plans

1. While Congress has adopted a national policy to govern labor-management relations, the National Labor Relations Act "leaves much to the states,

though Congress has refrained from telling us how much. We must spell out from conflicting indications of congressional will the area in which state action is still permissible." *Garner* v. *Teamsters Union*, 346 U.S. 485, 488. In the first case decided by this Court involving the question of preemption under the NLRA, the Court, applying the principle, already well-established in other fields of the law, that "an 'intention of Congress to exclude States from exerting their police power must be clearly manifested,'" concluded that the NLRA did not bar the states from regulating violence occurring in a labor dispute. *Allen-Bradley Local* v. *Wisconsin Board*, 315 U.S. 740, 749. See also *Auto Workers* v. *Wisconsin Board*, 351 U.S. 266, 274-275; *Lodge 76, Machinists* v. *Wisconsin Employment Relations Commission*, 427 U.S. 132, 136 n. 2.

Although not all subjects which a state may seek to regulate under its police power remain unaffected by the NLRA (see *infra*, pp. 16-19), the principle that state police power is not displaced absent a clear manifestation of congressional intent applies, not only to violence, but also to the establishment of minimum standards on other subjects which vitally affect the health, safety, or welfare of the state's citizens. This includes state regulation of "the employment relationship to protect workers within the State," through such means as "[c]hild labor laws, minimum and other wage laws, laws affecting occupational health and safety, and workmen's compensation laws." *De Canas* v. *Bica*, 424 U.S. 351, 356.[10]

Nor does the fact, noted by the Company (Resp. 4), that Section 18(a) of the Fair Labor Standards Act 52 Stat. 1069, as amended, 29 U.S.C. 218(a), expressly grants to the states the right to promulgate higher minimum wage and lower maximum hour laws detract from our position that these subjects are traditionally within the state's police powers. In enacting the Fair Labor Standards Act, Congress *did* express its intention to regulate minimum wages and maximum hours, thereby creating a presumption that the states' preexisting authority over these subjects had been displaced. A specific provision (Section 18(a)) was therefore necessary to assure that states would retain the power they possessed to set minimum wages and maximum hours which were more protective than the federal regulation. Thus the House Report on S. 2475, the bill which as enacted became the FLSA of 1938 stated: "The bill, if enacted, will not *supersede* any State minimum wage law if the State minimum wage is higher. No State maximum hour law will be *superseded* if the State maximum is lower." H. Rep. No. 1452, 75th Cong., 1st Sess. 10 (1937) (emphasis supplied). On the other hand, the finding of preemption in *Erie R. R. Co.* v. *New York*, 233 U.S. 671 (Resp. 3), is explained by the fact that the 1907 federal hours act limiting the working hours of railroad workers contained no provision permitting more protective state standards. Similarly, the preemption finding in *Railway Employees' Department* v. *Hanson*, 351 U.S. 225 (Resp. 3), is attributable to the fact that Congress expressly provided that the Railway Labor Act's authorization of the union shop would preempt

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[10] To be sure, *De Canas* did not involve "labor law preemption" (Response of Appellees to Memorandum for the United States ("Resp.") 3-4), but the question whether the Immigration and Nationality Act preempted a state statute regulating the employment of illegal aliens. However, the principle which it applied—i.e., that a preclusion of state power to regulate "the employment relationship to protect workers within the State" requires a clear manifestation of congressional intent—is equally applicable to "labor law preemption."

The Minnesota Act at issue here, designed to protect workers from the severe effects of the precipitous loss of their pensions is "certainly within the mainstream of such police power regulation." *De Canas* v. *Bica, supra.* No less than minimum wage or workmen's compensation laws, laws protecting pension benefits "regulate the employment relationship" to provide workers within the state with an assurance of economic security and to prevent their becoming a welfare burden to the state. In the area of pensions, as well as workmen's compensation, "a State, in the exercise of its power to pass such legislation as reasonably is deemed to be necessary to promote the health, safety and general welfare of its people * * * may require that these human losses shall be charged against the industry * * *." *Mountain Timber Co.* v. *Washington*, 243 U.S. 219, 243. See also *New York Central R. R. Co.* v. *White*, 243 U.S. 188, 203-204.

2. Proof that Congress intended that matters of pension regulation be left to the states is found in the Disclosure Act of 1958, which was in effect at

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contrary state law. Compare Section 14(b) of the NLRA, 29 U.S.C. 164(b), which "was designed to prevent other sections of the Act [i.e., the proviso to Section 8(a)(3), 29 U.S.C. 158(a)(3), which specifically authorized the union shop] from completely extinguishing state power over certain union-security arrangements." *Retail Clerks Assn.* v. *Schermerhorn*, 373 U.S. 746, 751. Here, as shown above, Congress, in enacting the NLRA, made no effort to set minimum standards for the health, safety, or welfare of employees; there is thus no basis for inferring that Congress has displaced the state's pre-existing authority to do so.

the time the Minnesota Act was passed.[11] The Disclosure Act

> provide[d] for registration, reporting, and disclosure of the financial operations of all types of private employee welfare and pension benefit plans. It [was] designed to place the primary responsibility for the policing and improved operations of these plans upon the participants themselves, with a minimum of interference in the natural development and operation of such plans, *to leave to the States the detailed regulations relating to insurance, trusts, and other phases of their operations*, and to place the least possible burden by way of cost and otherwise upon the plans and upon the Federal Government. * * *[12]

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[11] The Disclosure Act has since been superseded and repealed by the more comprehensive Employment Retirement Income Security Act of 1974, 88 Stat. 829, 29 U.S.C. (Supp. V) 1001 *et seq.* (ERISA). See 29 U.S.C. (Supp. V) 1031. The Minnesota Act has been preempted by ERISA, which provides for preemption of "any and all State laws insofar as they may now or hereafter relate to any [covered] employee benefit plan." Section 514, 29 U.S.C. (Supp. V) 1144. The preemption section, however, did not take effect until January 1, 1975, and Section 514(b)(1) provides that the section "shall not apply with respect to any cause of action which arose, or any act or omission which occurred before, January 1, 1975." The present controversy is therefore not moot since ERISA was not in effect at the time the Company terminated its pension plan. See *Fleck* v. *Spannaus*, 251 N.W. 2d 334 (Minn. Sup. Ct.). The Company does not dispute the fact that, but for the asserted preemption by the NLRA, the Minnesota Act applies to the termination involved here.

[12] S. Rep. No. 1440, 85th Cong., 2d Sess. 19 (1958) (emphasis added).

[Footnote continued on page 14]

Congress thus intended to leave to the States the responsibility for regulating pension plans as Minnesota has done here. Congress specifically provided that the Disclosure Act did not "exempt or relieve any person from any liability * * * provided by any present or future law * * * of any State affecting the operation or administration of pension plans." [13] Section 10(b), 72 Stat. 1003. And the legislative history explicitly disclaims any possibility that the Dis-

[12] [Continued]

See also remarks of Senator Douglas, 104 Cong. Rec. 7061 (1958); remarks of Rep. Santangelo, 104 Cong. Rec. 16434 (1958).

[13] The court of appeals distinguished this section of the Disclosure Act by holding that it "[c]learly * * * relates to state statutes governing those obligations of trust undertaken by persons managing, administrating or operating employee benefit funds, the violation of which gives rise to civil and criminal penalties. Accordingly, no warrant exists for construing this legislation to leave to a state the power to change substantive terms of pension plan agreements" (J.S. App. A-23). Such a narrow reading of this section is contradicted by the plain words of the statute. The Minnesota Act on its face is one "affecting the operation or administration" of pension plans, and the Company is a "person" (see Section 3, 72 Stat. 997) with a $19 million "liability * * * provided by" the Minnesota Act. Furthermore, if the Disclosure Act did not "leave to a state the power to change substantive terms of pension plan agreements," as the court of appeals concluded, then it must have taken such power away from the states. See pp. 9-12, *supra*. Not only is the statute bare of any such preemption, express or implied, but Section 10(b) and the legislative history quoted in the text convincingly establish Congress' intent to the contrary. Finally, the Senate report states simply that Section 10(b) "is the usual provision with respect to the effect of other laws." S. Rep. No. 1440, *supra*, at 33. This statement casts serious doubt on the court of appeals' conclusion that the section is limited to preserving only state statutes providing penalties for mismanagement.

closure Act would intrude on state regulation (S. Rep. No. 1440, *supra*, at 18) (emphasis added):

> There is no desire to get the Federal Government involved in the regulation of these plans but a disclosure statute which is administered in close cooperation with the States could also be of great assistance to the States in carrying out their regulatory functions.
>
> * * * * *
>
> [T]he legislation proposed is not a regulatory statute. *It is a disclosure statute and by design endeavors to leave regulatory responsibility to the States.* A Federal disclosure statute, if properly coordinated with the States, as the bill provides, could eliminate all but one disclosure report and leave insurance, trusts, and other detailed regulations to the States.

The legislative history also makes clear that Congress was concerned about the specific problem Minnesota has remedied here, namely, the loss of employee benefits because of inadequate vesting and funding provisions. A federal disclosure law was believed appropriate to help expose abuses so that remedial action of this nature could be taken by the states. S. Rep. No. 1440, *supra*, at 4, 15.

Moreover, when it enacted ERISA in 1974, Congress adopted a broad preemption provision, n. 11, *supra*, which further indicates that it was aware of the regulatory role which the states had played at the time the Minnesota Act was adopted. In explaining the Conference Report to the Senate, Senator

Javits, one of the managers of the Senate bill, expressly noted that state termination insurance plans would thenceforth be preempted.[14]

The court of appeals erred in rejecting the district court's reliance on this unambiguous expression of congressional intent (J.S. App. A-20 to A-23). Had Congress, by enacting the NLRA, preempted the states from regulating collectively bargained pension plans, its subsequent declarations in passing the Disclosure Act that states were free to regulate such plans would make no sense. As previously noted, Congress will be presumed to have preempted the states' police power to prescribe minimum standards for the health, safety, or welfare of its citizens only where it has "clearly manifested" its intent to do so (*Allen-Bradley Local*, *supra*). Here, not only is any indication of such intent absent, but the history of the Disclosure Act clearly manifested an intent *not* to preempt the states from regulation.[15]

[14] Senator Javits stated (120 Cong. Rec. 29942 (1974)): "In view of Federal preemption, State laws * * * establishing State termination insurance programs, et cetera, will be superseded." Representative Dent, a manager of the bill in the House, in presenting the conference report to his colleagues, stated that the broad preemption provision "eliminat[ed] the threat of conflicting and inconsistent State and local regulation." 120 Cong. Rec. 29197 (1974).

[15] The courts have recognized that the responsibility for protecting the worker's interest in the operation and termination of privately created pension and welfare funds has traditionally been considered a state function. See *Thacher* v. *United Construction Workers*, 180 N.E. 2d 245, 246-247, 10 N.Y. 2d 439; *O'Rourke* v. *Breakstone Bros., Inc.*, 218 F. Supp. 648, 650-651 (S.D. N.Y.). Thus, it has repeatedly been held that "pension trust funds established for the benefit of union members are established under the laws of the several states." *Craig* v. *Bemis Co., Inc.*, 517 F. 2d 677, 680 (C.A. 5); *Miller* v. *Davis*, 507 F. 2d 308, 311 n. 3 (C.A. 6); *Snider* v. *All States Administrators*, 481 F. 2d 387, 390 (C.A. 5), certiorari denied, 415 U.S. 957; *Connell* v. *United States Steel Corp.*, 516 F. 2d 401, 405 (C.A. 5); *Costello* v. *Lipsitz*, 547 F. 2d 1267, 1274-1275 n. 29 (C.A. 5); *Hurd* v. *Hutnik*, 419 F. Supp. 630, 653 (D. N.J.). And, the Fifth Circuit added in *Snider*, *supra*, "there is an exception to the preemption doctrine for 'matters of peripheral concern to federal labor law.' One of the areas not removed from governing state law is the creation of trust funds for the benefit of union members."

3. Against this convincing evidence that Congress intended to preserve the power of the states to regulate pension plans, the court of appeals erred in relying on *Local 24, Teamsters* v. *Oliver*, 358 U.S. 283. In that case, this Court held that the NLRA barred the State of Ohio from invalidating, under its antitrust laws, a minimum rental provision in a collective bargaining agreement between motor carriers and the union representing their drivers, which provision applied when a carrier leased a truck from an owner-driver. The purpose of the provision was to insure that the rental would be high enough to enable the owner-drivers to receive a wage commensurate with that established by the collective agreement for the motor carriers' own drivers, thereby removing the incentive to undercut the drivers' wages through leasing. The Court concluded that, since the NLRA imposed a duty on the carriers to bargain with the union concerning wages and since the minimum rental provision was designed to protect the negotiated

wages, application of state antitrust laws "would frustrate the parties' solution of a problem which Congress has required them to negotiate in good faith toward solving, and in the solution of which it imposed no limitations relevant here." 358 U.S. at 296. The Court emphasized that "[w]e have not here a case of a collective bargaining agreement in conflict with a local health or safety regulation; the conflict here is between the federally sanctioned agreement and state policy which seeks specifically to adjust relationships in the world of commerce." *Id.* at 297.

Thus, in *Oliver*, the state, through the application of its antitrust laws, sought to preclude the parties from bargaining over a subject as to which the NLRA mandated bargaining—*i.e.*, the minimum rental which an owner-operator could charge for the lease of his trucks—because of its judgment that such bargaining deprived the owner-operator of "reasonable freedom of action" in using his property. *Local 24, Teamsters* v. *Oliver*, *supra*, 358 U.S. at 289. Granted that state antitrust laws "materially affect the economic welfare of citizens" (Co. Resp. 6), and that such laws may constitute an exercise of the state's police powers, the purpose and effect of the application of such laws in *Oliver* was "specifically to adjust relationships in the world of commerce"—to prohibit adjustment of a subject through the process of collective bargaining. That is a matter on which Congress, in enacting the NLRA, has spoken, and therefore state power has been superseded. The NLRA reflects Congress' judgment that industrial strife is best averted by requir-

ing both labor and management to bargain collectively about wages, hours, and other terms and conditions of employment. For a state to preclude collective bargaining on a subject within the area of mandatory bargaining under the NLRA, as Ohio did in *Oliver*, directly conflicts with Congress' contrary judgment and alters the balance between labor and management which Congress has struck in the NLRA.[16] Cf. *National Labor Relations Board* v. *Insurance Agents' Union*, 361 U.S. 477, 489-490.

The Minnesota pension law involved here, on the other hand, does not purport "specifically to adjust relationships in the world of commerce." It does not preclude bargaining over a federally mandated bargaining matter. Rather, it merely requires that any negotiated pension plan conform to certain minimum standards of funding and vesting, which the state has determined are necessary to protect the economic welfare of its citizens and to prevent them from becoming a welfare burden to the state. As shown above, Congress, in enacting the NLRA, did not intend to supersede the states' power to enact minimum protective measures of this kind. The fact that pensions are "conditions of employment" and thus subject to bargaining under the NLRA (*Inland Steel Co.* v. *National Labor Relations Board*, 170 F. 2d 247

[16] Similarly, *California* v. *Taylor*, 353 U.S. 553, on which the Company relies (Resp. 3), involved the state's attempt to preclude collective bargaining on behalf of a category of employees (employees of a state-owned railroad) for which federal law (the Railway Labor Act) mandated bargaining.

(C.A. 7), certiorari denied, 336 U.S. 960) does not require a contrary conclusion. The states are free, for example, to require employers to meet minimum standards in furnishing sanitation and lighting facilities, even though these too are conditions of employment that are subject to bargaining. Moreover, had Minnesota enacted a statute forbidding the knowing employment of illegal aliens, for example, the Company could not successfully argue that such a statute must yield under *Oliver* to a collectively bargained agreement which provided for the employment of such aliens or which specified the wages to be paid them. Cf. *De Canas* v. *Bica*, *supra*. The situation is no different here.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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No. 76-1184

Supreme Court of the United States

October Term, 1977

E. I. Malone, Commissioner of Labor and Industry for Minnesota,

Appellant,

v.

White Motor Corporation and White Farm Equipment Company,

Appellee.

On Appeal from the United States Court Of Appeals for the Eighth Circuit

MOTION FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE AND BRIEF FOR THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS AS AMICUS CURIAE

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Supreme Court of the United States

October Term, 1977

No. 76-1184

E. I. MALONE, COMMISSIONER OF LABOR AND INDUSTRY FOR MINNESOTA,

Appellant,

v.

WHITE MOTOR CORPORATION AND WHITE FARM EQUIPMENT COMPANY,

Appellees.

On Appeal from the United States Court Of Appeals for the Eighth Circuit

MOTION BY THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE

The American Federation of Labor and Congress of Industrial Organizations hereby respectfully moves for leave to file the attached brief *amicus curiae* in the instant case as provided for in Rule 42 of the Rules of this Court. Counsel for the parties have not consented to the filing of that brief.

INTEREST OF THE AMICUS CURIAE AND ISSUES TO BE COVERED

The AFL-CIO is a federation of 102 national and international unions having a total membership of approximately 13,500,000 men and women. Establishing economic security through collectively bargained pension plans has long been a major concern of the AFL-CIO and its affiliates. However,

while this case involves problems concerning such plans, the precise legal issue here presented—the degree to which states may come to the aid of beneficiaries of terminated collectively bargained employee benefit programs to protect their pension rights—cannot recur. For, the Employee Retirement Income Security Act of 1974, now effective but not applicable to this case, both provides extensive protection to such plans and makes plain that state action in the area is, with certain specified exceptions, preempted. Our concern is, therefore, primarily with the implications of the decision below for the labor law preemption doctrine, both generally and as it pertains in particular to other state statutes setting minimum protective standards for employees.

This case has been presented by the parties as concerning the present vitality of *Teamsters* v. *Oliver*, 358 U.S. 283, in which this Court held that the states may not ordinarily apply their own law to hold invalid agreements reached by unions and employers upon mandatory subjects of bargaining. *Oliver* appears to us to have established a valid and necessary rule faithful to the concept underlying the national labor policy favoring free collective bargaining. We were originally prepared, therefore, to support the position of appellees despite the immediate consequence of that position in this case.

This intention was premised, however, upon the assumption that the court of appeals' explication of the history of the Welfare and Pension Plan Disclosure Act of 1958 was accurate. For the *Oliver* principle, like any other general preemption principle, is not and ought not to be absolute; contrary explaantions of Congressional intent must be given effect. Closer investigation of the WPPDA and its history demonstrate that, while the issue is close, it does seem that

Congress' purpose in 1958 to permit—indeed promote—state regulation of welfare and pension plans was broad enough to encompass the sort of substantive regulation Minnesota undertook in 1974.

In Part I of our brief we therefore develop the implications for this case of the Congressional intent expressed in the WPPDA as we understand that intent and argue that the decision below should be reversed. Then, in Part II, we assume that the WPPDA is not relevant here and explore the proper application of the *Oliver* principle to the facts presented in this case. We there suggest a narrower basis for affirmance of the judgment below.

In our brief we do not address broad questions concerning federal labor law preemption of state protective regulation affecting collective agreements debated by appellant and appellees, because we are convinced that there is no need for this Court to consider them to decide either this case or analogous cases likely to arise in the future. For as to almost every kind of protective state legislation which has the effect of limiting th ebargain which can be struck between employers and unions, there is now a federal statute of both setting minimum national substantive standards and indicating whether and to what degree states may act in related areas. These federal statutes, of which WPPDA appears to us to be one, are, we point out, as much a part of the federal labor policy as the NLRA. And, as this Court explained in *Boys Markets* v. *Clerks Union*, 398 U.S. 235, sensitive statutory interpretation requires that the NLRA and other federal labor statutes be "accommodated" to each other even when they appear to point in opposite directions. We argue that the federal-state relationship envisioned by statutes similar to WPPDA there-

fore ought to be given effect even where the intent to permit application of state law to collective agreements is not express. The harm to the NLRA free collective bargaining principle will be minimal where there is already federal regulation as to a facet of the employment relationship, while complex Congressional schemes for allocating regulatory authority between the federal government and the states would be upset if the usual NLRA preemption rules applied.

In the final section of our brief we develop the point that where the NLRA is the only statute in the picture, *Oliver* plainly and properly precludes that statutes such as that here from changing the terms of collective agreements in force. Since the parties bargained for an over-all package, it would be an intolerable interference with the free collective bargaining envisioned by federal law to permit the states without Congressional sanction to change that bargain in part.

CONCLUSION

For the above stated reasons, this motion for leave to file a brief *amicus curiae* should be granted.

Respectfully submitted,
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WHITE MOTOR CORPORATION AND WHITE FARM EQUIPMENT COMPANY,
Appellees.

On Appeal from the United States Court Of Appeals for the Eighth Circuit

BRIEF FOR THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS AS AMICUS CURIAE

This brief *amicus curiae* is filed by the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) contingent on the granting of the foregoing motion by the AFL-CIO for leave to file a brief as *amicus curiae.*

INTRODUCTION AND SUMMARY OF ARGUMENT

This case concerns whether a state statute regulating the termination of an employee pension program in a manner that invalidates certain limitations stated in a collective agreement on the employer's liability in the event of termination may be given effect. The parties have presented

the case as one raising broad questions concerning the present vitality of *Teamsters Union* v. *Oliver*, 358 U.S. 283, in which the Court held:

> "Federal law created the duty upon the parties to bargain collectively; Congress has provided for a system of federal law applicable to the agreement the parties made in response to that duty, *Textile Workers Union* v. *Lincoln Mills*, 353 U.S. 448; and federal law sets some outside limits (not contended to be exceeded here) on what their agreement may provide, * * *. We believe that there is no room in this scheme for the application here of this state policy limiting the solutions that the parties' agreement can provide to the problems of wages and working conditions. * * *. Since the federal law operates here, in an area where its authority is paramount, to leave the parties free, the inconsistent application of state law is necessarily outside the power of the State." (*Id.* at 296.)

In effect, the Court is being asked either to abandon the perception of *Oliver* that state limitations upon the terms of a collective agreement can as effectively hamper the federal labor policy as state intrusion into the means of bargaining,[1] or the use of economic weapons, or to view

[1] For example, the State maintains that only state laws affecting the bargaining *process*, and not those limiting the substance of a collective agreement are pre-empted; *Oliver* is distinguished on the ground that in that case there was "a direct and material interference with the bargaining process". (Brief for Appellants (hereafter "App. Br.") at 21.) The State alternatively distinguishes *Oliver* on the ground that "the state law challenged therein was an antitrust statute, [and] '[s]tate antitrust statutes present unique problems in the area of labor preemption.' " (App. Br. 23). The first suggestion is belied by the plain words of *Oliver*, quoted

Oliver as stating an all-encompassing pre-emption principle mandating that no state laws affecting the terms of collective agreements may ever be given effect.[2]

We see no need for this Court to choose between these

in the text, which show that state interference with the *terms* of a labor agreement is precisely what is generally outlawed; the second distinction amounts to an invitation to restrict *Oliver* to its facts. The United States, appearing as *amicus curiae*, seems at first to accept *Oliver's* holding that state laws directly affecting mandatory subjects in collective agreements may be pre-empted in some circumstances but, it then relies upon a broad construction of the heretowould appear to swallow the rule. In apparent recognition that this broad view of the police power exception engulfs *Oliver*, the United States offers an exception to the exception—if the purpose of the state statute is "specifically to adjust relationships in the world of commerce" the statute is invalid. (U.S. Br., at 18.) But, if that approach were followed, the state statute here would fall, because Minnesota's pension regulation does "specifically adjust relationships in the world of commerce"; indeed, that regulation has application only to the employee/employer relationship and thus directly implicates labor law interests. Thus, while the United States argues for reversal of the decision below, its theory suggests the opposite result. This shows that the government's argument is so convoluted, vague and internally inconsistent that it confuses the issues rather than clarifies them.

[2] This is the proposition advanced by White Motor Corporation—that "no state which would limit the agreements which could be reached by employers and unions on mandatory subjects of bargaining can *ever* be effective." The Court of Appeals appeared to agree, perceiving in this Court's opinions "the * * * proposition that a state cannot modify or change an otherwise valid and effective provision of a collective agreement." (Pet. App. 20.)

two disturbing alternatives.[3] For, while the reasoning of *Oliver* seems to us to be compelling, the prohibition on state action stated by the Court is qualified by the rule that the states *may* act where "[t]he solution worked out by the parties was * * * one of a sort which Congress has indicated may be left to prohibition by the several States." (358 U.S., at 296.) And, in *Boys Markets* v. *Clerks Union*, 398 U.S. 235, 250, this Court explained that "the total corpus of pertinent law and * * * policies" is to be considered in explicating the federal labor policy. Here, and in many other areas in which parallel problems are likely to arise, the Congress has itself enacted federal legislation affecting a particular aspect of the employee/employer relationship, and has included in such legislation provisions describing the power of the states to act as to that same general facet of labor relations. As to such matters, it is our position that, in accord with the *Boys Markets* approach, the problem is properly viewed as one of accommodating the general NLRA pre-emption rule stated in *Oliver* to later express indications by Congress that "the solution worked out by the parties" was indeed "left to prohibition by the several states". And, in our view, proper accommodation requires giving effect to the federal-state regulatory relationship envisioned in specific substantive enactments as long as the state law in question is consonant with the federal labor policy as expressed in the total corpus of pertinent labor statutes.

[3] The position of both the State and the United States could, taken at face value, permit states actually to set directly and entirely the wages and working conditions of all employees in the state, precluding any collective bargaining whatever. On the other hand, if the unyielding proposition pressed by appellees and adopted by the court below were correct, the effect would be equally profound. For there are, in nearly every state, statutes which provide basic protection to employees in such diverse areas as minimum wages, maximum hours, racial and sexual discrimination, health and safety rules and disability insurance.

In Part I of our Argument, therefore, we first demonstrate that the approach of *Oliver*—setting a basic rule of pre-emption but recognizing that a specific Congressional indication to the contrary must prevail—is but an example of the general analysis this Court has used in the labor law pre-emption area. We then discuss appellees' argument that unless it is apparent from the NLRA itself (or from a later statute expressly countermanding the *Oliver* principle as to a particular facet of labor relations) that Congress intended to allow state regulation in that area, all of later statutes in which Congress appeared to permit state activity are to be ignored. Applying the *Boys Markets* approach, we show that the "total corpus of pertinent law and * * * policies" applicable here includes not only the NLRA but a set of statutes in which Congress undertook some federal regulation of an aspect of the employer/employee relationship and indicated at the same time whether and to what degree states could act in the same general area. Reconciling those later statutes to the NLRA requires, we argue, that the federal-state relationship envisioned as to specific protections for employees should be given effect as long as the state statute in question is consistent with the federal labor policy as expressed in the NLRA or other relevant federal labor law in question.

We then address the application of the principles developed to this case. The federal Welfare and Pension Plan Disclosure Act of 1958 ("WPPDA"), in force when this case arose, did in our view, indicate an intent not only to

permit but to encourage state regulation of employee benefit programs; the court of appeals' conclusion to the contrary appears to be based on a misunderstanding both of the state law here at issue and of the federalism scheme envisioned by Congress in the WPPDA. While the extent of Congressional permission under the WPPDA is somewhat less clear than in the other statutes discussed, we believe it to be sufficiently broad to embrace the state legislation here at issue.

In Part II we discuss an alternative approach, applicable only if the Court disagrees with our assessment of the impact of the WPPDA. In that event we argue that the judgment should be affirmed on the narrow ground that even state protective statutes may not affect *existing* collective agreements. Whether or not the national labor policy could tolerate a system presupposing that bargaining is to take place against a background of differing state laws affecting mandatory subjects, application of such laws to existing agreements is intolerable in that it directly imposes a bargain rather than merely setting limits within which the negotiations occur.

ARGUMENT

I. 1. In large part, this Court's approach to various problems concerning pre-emption of state regulation by the NLRA and the policies underlying it has been dictated by "the necessity to act without specific Congressional direction" and by the understanding that it was not the Congress' intent to "declare pre-empted all local regulation that touches or concerns in any way the complex interrelationships between employees, employers and unions; obviously much of this is left to the states." (*Motor Coach Employees* v. *Lockridge*, 403 U.S. 274, 289.) Therefore, as to those pre-emption problems upon which there were only the basic parameters of the NLRA to inform the determination whether a particular matter was "left to the states," the Court, after some experimentation with various approaches, determined to set broad, general principles, with delineated classes of exceptions, in order to simplify decision making by state and federal courts to the extent possible. (*Lockridge, supra*, 403 U.S., at 290-291, 302; see *also Farmer* v. *Carpenters*, 430 U.S. 290, *Machinists* v. *Wisconsin Employment Relations Comm'n*, 427 U.S. 132).

At the same time, this Court has always recognized that its decisions in the area of labor law pre-emption "[do] not state * * * constitutional principles; [they] merely rationalize the problems of coexistence between federal and state regulatory schemes in the field of labor relations * * *." (*Retail Clerks* v. *Schermerhorn*, 375 U.S. 96, 103). Thus, "[t]he purpose of Congress [remains] the ultimate touchstone. Congress under the Commerce Clause may displace state power * * * or it may * * * indicate a purpose to let state regulation be imposed on the federal regime." (Id. at 103-104.) Even where it appears that to give effect to state regulation might conflict with general presuppositions believed to underly the NLRA, state law is to be given effect where there is "a conflict sanctioned by Congress with directions to give way to state laws * * *." (*Id.*, at 103.)

Oliver, supra, is entirely consistent with this mode of decisionmaking in the labor law pre-emption area. Because Congress had not specifically addressed the question whether, and to what degree, state law may impinge upon the terms parties to a collective bargaining agreement may reach on mandatory subjects of bargaining, the Court extrapolated from the basic NLRA purpose of promoting free collective bargaining the general rule that "state policy [may not limit] the solution that the parties agreement can provide to the problems of wages and working conditions." (*Oliver, supra*, 358 U.S., at 296). However, the Court recognized that the general rule would not apply where "[t]he solution worked out by the parties was * * * one of a sort which Congres has indicated may be left to

prohibition by the several states." (*Id.*, at 296). The question, then, is whether Congress has so indicated with regard to the pension regulation here at issue.

2(a) The district court in this case, in holding that the Minnesota pension enactment was not pre-empted by federal labor policy, relied in part precisely upon an explicit Congressional indication that "the solution worked out by the parties was * * * one of a sort which * * * (is) left to prohibition by the several states." For, that court noted that the Welfare and Pension Plans Disclosure Act of 1958 ("WPPDA"), since superseded by a more comprehensive federal enactment but in effect when the pension plan here at issue was terminated, appeared expressly to permit state regulation of employee benefit programs, and that the legislative history of that Act demonstrates that the intent was not only to permit but to encourage such legislation.

The court of appeals disagreed with the district court as to the significance of the WPPDA, for it did not perceive that the Congress in that statute expressed an intent to permit state regulation of the type here at issue. For reasons we discuss later (*infra*, at 24) we believe the court of appeals may well have misunderstood both the character of the state law and the extent of Congressional permission to the states in the WPPDA.

The Company, however, appears to maintain that even if it were plain that Congress in 1958 contemplated plenary state regulation of employee pension plans, that intent could not be effective because the expression of Congressional intent as regards the power of states to regulate pension plans was not an integral part of the NLRA and did not expressly cede power to affect collective agreements:

> "The Disclosure Act became law in 1958. At that time * * * the National Labor Relations Act had been in effect for many years. * * *
>
> Consequently, when the Disclosure Act was enacted, states did not have the power to change substantive terms of collective bargaining agreements, and the Disclosure Act did not cede power to the states." (Response of Appellees to Memorandum for the United States as Amicus Curiae, at 8).

While this analysis has a conceptual neatness about it, it disregards the duty of courts "to accommodate all statutes pertinent to the decision of cases before them. (*Sinclair Refining Co.* v. *Atkinson*, 370 U.S. 195, 220 (Brennan, J., dissenting).) "Statutory interpretation requires [that] * * * consideration must be given to the total corpus of pertinent law and the policies that inspired ostensibly inconsistent provisions." (*Boys Markets* v. *Clerks Union*, 398 U.S. 235, 250).

In *Boys Markets*, the Court applied this approach to limit the application of "[t]he literal terms of § 4 of the Norris-LaGuardia Act * * * to the subsequently enacted provisions of § 301(a) of the Labor Management Relations Act and the purposes of arbitration." (*Id.*, at 250). It did so because:

> "[a]s labor organizations grew in strength and developed toward maturity, congressional emphasis shifted from protection of the nascent labor movement to the encouragement of collective bargaining and to administrative techniques for the peaceful resolution of industrial disputes. This shift in emphasis was accomplished, however, without extensive revision of many of the older enactments, including the anti-injunction section of the Norris-LaGuardia Act. Thus it

became the task of the courts to accommodate, to reconcile the older statutes with the more recent ones." (*Id.* at 251).

(b) Here, the "total corpus of pertinent law" includes not only the NLRA and the WPPDA but, in addition, a set of federal statutes which regulate aspects of the employee-employer relationship which would otherwise be a mandatory subject of collective bargaining and at the same time relegate to the states some power, often circumscribed by express limitations, to regulate in the same area as well. These statutes provide the context for understanding the place of the WPPDA in the federal scheme and we therefore review them before turning to our discussion of that Act.

The first of these enactments, the Fair Labor Standards Act, was passed only three years after the NLRA. In words quite similar to those used in the WPPDA,[4] the FLSA expressly permitted state regulation of minimum wages and maximum hours, as long as the state standards were more protective than the federal standards. Such state regulations could, of course, have the effect of invalidating a collective agreement if that agreement provided for wages less than or hours longer than state law requires. Nonetheless,

[4] 29 U.S.C. Section 218(a) reads: "No provision of this chapter or of any order thereunder shall excuse noncompliance with any Federal or State law or municipal ordinance establishing a minimum wage higher than the minimum wage established under this chapter or a maximum workweek lower than the maximum workweek established under this chapter, and no provision of this chapter relating to the employment of child labor shall justify noncompliance with any Federal or State law or municipal ordinance establishing a higher standard than the standard established under this chapter."

Congress in 1938 saw no fundamental inconsistency between the scheme of free collective bargaining just established and the setting by the states of certain specified minimum protective standards for employees in a general area in which there was federal regulation as well.

Between 1938 and 1958 there was little federal legislation of general application substantively affecting the terms and conditions of employment in a way likely to affect the substance of collective agreements. But:

> "[W]ithin a few years [after 1960] there began an ever increasing quantity of substantive federal regulation of the terms and conditions of employment * * *. In 1963, there was the Equal Pay Act; in 1964, Title VII of the Civil Rights Act; in 1970, the Occupational Safety and Health Act and Title III of the Consumer Credit Protection Act limiting the right of an employer to discharge because of garnishment. In 1974, the Employee Retirement Income Security Act (ERISA) was passed—problems created by the interrelationships between that Act and collective bargaining agreements are just beginning to be felt." (Feller, *Arbitration: The Days of Its Glory Are Numbered,* 2 Industrial Relat. L.J. 97, 105 (1977, footnotes omitted))

To this list could be added the Age Discrimination Act of 1967, Title IX of the Education Amendments of 1972, and the various mine safety and health protection acts. Each of these statutes substantively affect the terms of collective agreements on mandatory subjects of bargaining by setting minimum standards of protection for individual employees which may not be breached.

In enacting these statutes, the Congress was careful, as

it had been in the FLSA, to spell out whether and to what degree state regulation affecting matters touched by the new federal legislation was permitted. In some instances, it is clear that Congress intended, and indeed encouraged, state activity; in others, state activity was permitted only if specified conditions were met; and in still others, Congress expressly pre-empted most state regulation, even as to matters not touched by the federal statute.

For example, the Civil Rights Act of 1964, of which Title VII prohibiting employment discrimination based upon race, sex, religion or national origin was a part, contained a general declaration that "nothing contained in any title of this Act shall be construed as * * * [excluding] * * * State laws on the same subject matter * * * unless such provision is inconsistent with any of the purposes of this Act, or any provision thereof." (Section 1104 of the Civil Rights Act of 1964, 29 U.S.C. Section 2000h-4). In Title VII itself, Congress made clear that it intended to do more than simply not disturb state regulation. In states which had legislation prohibiting employment discrimination of the kind covered by the Act, complainants were affirmatively required to pursue their state remedies first (Section 706(c) and (d) of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e-5(c) and (d)); and provision was made for cooperation between the Equal Employment Opportunity Commission and "state and local agencies charged with the administration of State fair employment practices laws * * *." (Section 709(b) of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e-8(b); see also Section 709(d), 42 U.S.C. Section 2000e-8(d)). Thus, Congress made state activity in the area of fair employment practices an integral part of the Title

VII scheme.[5] It did not, however, spell out explicitly that states could exercise power in this area even when the terms of collective agreements were affected. On appellants' reasoning, such an express provision would be necessary to counteract the earlier pre-emptive effect of the NLRA. But, to take this wooden view would be to imply an exception into the procedural provisions of Title VII for fair employment practices complaints which would affect mandatory subjects of bargaining; otherwise, complainants would be required to apply to a state agency which is without power to deal with their problem. Plainly, Congress could not have intended such an exception, which would create chaos in the procedural format of Title VII. Rather, Congress meant to permit state regulation in this area regardless of whether collective agreements are effectual.

The Occupational Health and Safety Act of 1970 is another Act in which Congress created federal regulation with a potential effect on mandatory subjects of bargaining; plainly, health and safety matters involve "working conditions". Yet the health and safety protections established

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[5] The Age Discrimination Act of 1967 is similar: it provides that "[n]othing in this [Act] shall affect the jurisdiction of any agency of any State performing like functions with regard to discriminatory employment practices on account of age * * *". (Section 14 of the Age Discrimination Act of 1967, 29 U.S.C. Section 633). It then specifies that no lawsuit may be filed under the federal act until sixty days (or, in the first year after a state statute's effective date, one hundred and twenty days) after proceedings have commenced under state law but that, once commenced, the federal action shall supersede any state action (Id.). Thus, as in Title VII, some exhaustion of state remedies is required; and, as in Title VII, there is no exception for actions which involve mandatory subjects of collective bargaining.

by the Act may not be countermanded by the terms of a collective agreement. Once again, Congress spelled out the role of the states with regard to matters related to the federal legislation: the states were free to regulate with regard to health and safety issues as to which there were no federal standards but as to those matters where there were such standards, they could act if specifically permitted to do so by the Secretary of Labor after demonstrating compliance with enumerated requirements. (Section 18, OSHA, 29 U.S.C. Section 667).[6]

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[6] Section 18, OSHA, 29 U.S.C. 667 reads in part:

(a) Nothing in this chapter shall prevent any State agency or court from asserting jurisdiction under State law over any occupational safety or health issue with respect to which no standard is in effect under section 655 of this title.

Submission of State plan for development and enforcement of State standards to preempt applicable Federal standards

(b) Any State which, at any time, desires to assume responsibility for development and enforcement therein of occupational safety and health standards relating to any occupational safety or health issue with respect to which a Federal standard has been promulgated under section 655 of this title shall submit a State plan for the development of such standards and their enforcement.

Conditions for approval of plan

(c) The Secretary shall approve the plan submitted by a State under subsection (b) of this section, or any modification thereof, if such plan in his judgment—

(1) designates a State agency or agencies as the agency or agencies responsible for administering the plan throughout the State,

(2) provides for the development and enforcement of safety and health standards relating to one or more safety or health issues, which standards (and the enforcement of which standards) are or will be at least as effective in providing safe and healthful employment and places of employment as the standards promulgated under section 655 of this title which relate to the same issues, and which standards, when applicable to products which are distributed or used in interstate commerce, are required by compelling local conditions and do not unduly burden interstate commerce,

(3) provides for a right of entry and inspection of all workplaces subject to this chapter which is at least as effective as that provided in section 657 of this title, and includes a prohibition on advance notice of inspections,

(4) contains satisfactory assurances that such agency or agencies have or will have the legal authority and qualified personnel necessary for the enforcement of such standards,

(5) gives satisfactory assurances that such State will devote adequate funds to the administration and enforcement of such standards,

(6) contains satisfactory assurances that such State will, to the extent permitted by its law, establish and maintain an effective and comprehensive occupational safety and health program applicable to all employees of public agencies of the State and its political subdivisions, which program is as effective as the standards contained in an approved plan,

(7) requires employers in the State to make reports to the Secretary in the same manner and to the same extent as if the plan were not in effect, and

(8) provides that the State agency will make such reports to the Secretary in such form and containing such information, as the Secretary shall from time to time require.

For other federal legislation which provides for the possibility of state regulation in the absence of federal standards, see the Consumer Credit Disclosure Act, 15 U.S.C. Section 1601, 1610; and the Coal Mines Health & Safety Act, 30 U.S.C. Section 801, 953, amended by P.L. 95-164, 91 Stat. 1320(c)(1).

Once again, state action was made an integral, although regulated, part of the federal scheme; once again, there was no difference suggested between state regulation which could affect collective agreements and other state regulation. Yet, once again, while the Congressional intent was

quite clear, there was no express provision negating any pre-emptive effect of the NLRA. Congress did prohibit certain state activity, but only that which was not pursuant to an approved state plan.[7] To impose a general NLRA pre-

[7] Similarly in *N.Y. Telephone Co.* v. *N.Y. Dept. of Labor*, 96 LRRM 2921, C.A. 2, 1977, the court, while conceding that "a positive expression of Congressional intent is lacking" with respect to the preemptive effect of federal labor laws on state laws dealing with payment of unemployment benefits to strikers, 96 LRRM at 2923, found that:

> "* * * review of the relevant legislative history discloses no clear preemptive intent; indeed, virtually all the evidence is to the contrary. As mentioned above, the question whether striking employees should be afforded unemployment compensation has been a significant political issue since the early 1930s. In 1935, at a time when Congress sought to encourage the States to enact unemployment compensation statutes, New York was in the forefront, and its law granted compensation to strikers. For over forty years, Congress has been aware of the issue in general, and of New York's program in particular. "Congressional awareness, the availability of opportunities to act, and Congressional action in closely related matters," Grinnell, supra, 475 F.2d at 454, 82 LRRM at 2990, are all relevant in trying to determine Congress' intent, and all are present here. Moreover, their probative value increases over time. A long-standing practice "is not something to be lightly cast aside." Walz v. Tax Commission, 397 U.S. 664, 678 (1970). Accordingly, we hold that, notwithstanding the general rule that State statutes which touch or concern labor relations should be neutral, Lodge 76, International Association of Machinists v. Wisconsin Employment Relations Commission, supra, 427 U.S. at 149-50, 92 LRRM 2881, and despite the otherwise broad preemptive scope of the federal labor laws, Congress has not expressed an intent to preempt State unemployment compensation laws that provide benefits to strikers. Quite to the contrary, it has evinced an intention to leave the State free to regulate in this area. Therefore, the conflict between New York's statute and the broad federal policy of free collective bargaining does not render the State statute unconstitutional. The conflict is one which Congress has decided to tolerate." 96 LRRM at 2926.

emption notion upon this comprehensive scheme would, as with Title VII, do violence to a well-considered decision about the appropriate distribution of power between the federal and state governments as regards a delineated area of employer/employee relationships.

Illustrative of a Congressional decision largely to supersede state power in another such area is the Employee Retirement Income Security Act of 1974 ("ERISA"), the federal statute which replaced the WPPDA, but which is not applicable to the present case. Section 514 of ERISA, 29 U.S.C. Section 1144, expressly pre-empts, with certain exceptions, "any and all State laws insofar as they may now or hereafter be related to any employee benefit plan described in Section 1003(a) of this title and not exempt under Section 1003(b) of this title". Thus, unlike the other statutes surveyed, ERISA does not incorporate state regulation as part of the federal scheme; indeed, it pre-empts state action even as to matters not federally regulated. But, even in ERISA Congress evidenced an intention to allow state activity of certain kinds in areas related to the federal legislation—namely, as pertinent here, state activity with regard to "any cause of action which arose, or act or omission which occurred, before January 1, 1975;[8] also per-

[8] The parties seem to agree that, had the events which precipitated this lawsuit occurred after January 1, 1975, the Minnesota statute would be ineffective. This delay is consonant, of course, with the recognition that such state regulation was expressly sanctioned by the predecessor federal statute, the WPPDA. Since the new federal regulatory scheme could not go into effect immediately, it was appropriate to permit that state activity to continue for a short period.

mitted was state regulation pertaining to certain employee benefit programs, including workmen's compensation, unemployment compensation and disability insurance. (See Section 41(b), ERISA, 29 U.S.C. Section 1003(b), incorporated into Section 514). With regard to these exceptions, there was no different treatment for collective agreements nor was there an express permission to the states to legislate in a way which affected the substance of such agreements. Nonetheless, the intent to permit state activity is plain.

Thus, the pattern which has been established is that when Congress determines to regulate, in whole or in part, a substantive aspect of employee-employer relationships, it at the same time gives careful thought to whether states may legislate in the same general area; it then spells out its decision in a section of the federal statute, often making careful distinctions between those areas into which the states may intrude—indeed, are encouraged to intrude—and those from which they are precluded. Without disturbing the holding of *Oliver*—which expressly recognized that a Congressional purpose to sanction state regulation is to be given effect—it is possible to "accommodate", as *Boys Markets* directs, the rule of NLRA pre-emption of state laws invalidating terms of a collective agreement. For, where Congress has enacted federal regulation in an area concerning which employers and unions are directed to bargain, it has necessarily altered the usual freedom to bargain by directing that the bargaining must conform to established limits. In those areas, therefore, the freedom the NLRA ordinarily grants has necessarily been to some degree disturbed because of a perceived countervailing public policy requiring affirmative governmental protection to

employees. Allowing state regulation in this situation as well may be an incremental increase in the degree to which bargaining is limited, but it does not entail intrusion into an area of employee/employer relationship otherwise entirely free from regulation.

Further, as in *Boys Markets*, this mode of accommodation contains inherent protections which assure that the fullest possible scope is given to each of the policies involved without infringing in any central way upon countervailing concerns. For, the scope of state regulation permitted would necessarily be limited to that consistent with the concerns expressed by Congress in both the NLRA and specific federal legislation involved. The states could not, therefore, go beyond the federal permission to establish basic protections for employees; for example, in light of the policies the Congress has followed thus far, state statutes limiting bargaining for greater protection would ordinarily find no sanction in federal legislation, nor would statutes which provide maximum rather than minimum standards be consistent with federal permission to legislate protection for employees as to any particular matter. Finally, if the states were to expand their regulation to create procedural impediments to bargaining, federal legislation of the kind surveyed could not be taken as permission to proceed, since each takes the form of substantive standards rather than procedural regulation of the bargaining process; the strong NLRA policy against state regulation of bargaining as such would then prevail. As this Court pointed out in *Oliver*, and reaffirmed in *Connell Co.* v. *Plumbers and Steamfitters*, 421 U.S. 616, under this standard there is, for example, no room for the state anti-trust laws:

"The use of state antitrust law to regulate union ac-

tivities in aid of organization must * * * be preempted because it creates a substantial risk of conflict with policies central to federal labor law. In this area, the accommodation between federal labor and antitrust policy is delicate. Congress and this Court have carefully tailored the antitrust statutes to avoid conflict with the labor policy favoring lawful employee organization, not only by delineating exemptions from antitrust coverage but also by adjusting the scope of the antitrust remedies themselves. See *Apex Hosiery Co.* v. *Leader*, 310 U.S. 469 (1940). State antitrust laws generally have not been subjected to this process of accommodation. If they take account of labor goals at all, they may represent a totally different balance between labor and antitrust policies. Permitting state antitrust law to operate in this field could frustrate the basic federal policies favoring employee organization and allowing elimination of competition among wage earners, and interfere with the detailed system Congress has created for regulating organizational techniques." (Id. at 635-636, footnote omitted.)

Thus, the general federal labor policy, composed both of the NLRA and of later substantive regulation, is best effectuated by giving effect to the federal-state relationship envisioned when the federal regulation was enacted, limiting state activity to setting substantive standards consistent with the federal labor policy, viewed as a whole.

As noted, Congress has now indicated its intent upon state regulation with regard to most of the important areas of state activity likely to affect collective agreements. Questions concerning the application of the *Oliver* rule to state statutes establishing protections for employees in areas where there is no indication that Congress is sanctioning state regulation are therefore unlikely to arise; there is, at

any rate, no need to address such questions to decide the present case—as we now show.

3. The WPPDA was the first direct foray by the federal government into the regulation of private employee benefit programs.[9] The Congress determined to limit the federal role at the outset to complete disclosure to participants of the terms of benefit plans and of relevant information on their operations. In part, this decision to proceed on a limited basis reflected a recognition of the complexity of the area, and a consequent desire to collect information on the operation of such plans before considering federal substantive regulation. (H.R. Rep. No. 2283, 85th Cong., 2nd Sess. (1958), in 1958 U.S. Code Cong. and Admin. News (hereinafter "H.R. Rep.") 4137, 4181). But the primary impetus for limiting the federal incursion into the area was the fact that the regulation of employee welfare plans was conceived to be "traditionally and primarily a state function." (Id. at 4187):

> "[T]he legislation proposed is not a regulatory statute. It is a disclosure statute and *by design endeavors to leave regulatory responsibility to the States.* A Federal disclosure statute, if properly coordinated with the States as the bill provides, could eliminate all but one disclosure report and leave insurance, trusts, and other detailed regulations to the States." (S. Rep. No. 1440, 85th Cong. 2nd Sess. (1958) p. 4153, emphasis supplied.)

The intent to permit state regulation of employee benefit plans was embodied in Section 10(b) of the Act, former 29 U.S.C. § 309(b):

[9] Section 302 of the Taft-Hartley Act, 29 U.S.C. Section 186, regulated collectively bargained benefit programs only to the limited degree of setting certain conditions upon union participation in the administration of plans funded through employer contributions.

"(b) Present or future Federal or State laws. The provisions of this chapter, except subsection (a) of this section, and any action taken thereunder, shall not be held to exempt or relieve any person from any liability, duty penalty, or punishment provided by any present or future law of the United States or of any State affecting the operation or administration of employee welfare or pension benefit plans, or in any manner to authorize the operation or administration of any such plan contrary to any such law.

It is important to note that the WPPDA not only *permitted* state regulation of employee benefit programs but was affirmatively intended to aid states in that function. Thus the statute was designed to be "administered in close cooperation with the States [so that it] could * * * be of great assistance to the states in carrying out their regulatory functions." (S. Rep., *supra*, at 4153.) In particular, Section 10(a) provided for the filing of reports required by the Act with state regulatory agencies in certain circumstances, "to permit coordination between the Federal and State Governments in carrying out their respective obligations." (S. Rep., *supra*, at 4168.).[10] And, while Congress was aware that state legislation until 1958 in the employee benefit field had been limited, one purpose of the Act was "to provide adequate information in disclosure legislation for possible later state * * * regulatory laws." (H.R. Rep. *supra*, at 4181.)

State power to regulate employee benefit plans was therefore central to the format of the WPPDA; the intent was not only to supplant whatever the states had done in the employee benefit area in the past, but to facilitate new approaches by the states in the future. Nor is there any possibility that WPPDA intended the state activity to be limited to non-collectively bargained plans. For, it was with regard to collectively bargained plans that Congress first became concerned about the protection of beneficiaries (S. Rep., *supra* at 4147), and the potential effect upon collective bargaining of expanded disclosure and regulation was [a] primary objection raised by opponents of the bill. (S. Rep., *supra*, at 4175 (Minority Views); H.R. Rep., *supra*, at 4203.) Moreover, with regard to the very termination problems Minnesota attempted to alleviate by the statute here under attack, Congress noted expressly that there is little difference in protection from detrimental termination between collectively bargained plans and other plans, because collective bargaining agreements can generally prevent termination or assure continued adequate contributions only during the period they are in effect; employees are protected only if "their union (is) able to renew the contract or negotiate a similar one upon its termination". (S. Rep., *supra*, at 4144). Thus, Congress intentionally drew no line at all between collectively bargained plans and other plans in the WPPDA, either with regard to the disclosure role of federal government or with regard to the state regulatory function. Only when, after sixteen years, the WPPDA experiment in federalism was declared a failure did Congress in ERISA enact plenary federal regulation and supersede state power in the employee benefit area.

The Court of Appeals, in the face of explicit statutory language and compelling legislative history, maintained

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[10] See also *id.* at 4160 (emphasis supplied): [The Act] is designed * * * to leave to the States the detailed regulations relating to insurance, trusts, and other phases of their operations, and, through cooperation with the States by furnishing information on said plans, to *assist them in this job* * * *."

that "no warrant exists for construing this legislation to leave to a state the power to change substantive terms of pension plan agreements." (Pet. App. 21.) This conclusion both misconceives the legislation here under attack and appears to misread the relationship between federally mandated disclosure and state regulation established by Congress in 1958.

Aside from the other errors of the Court of Appeals, its characterization of the Minnesota act as working a "change" in the substantive terms of pension plan agreements is a misleading one. As Congress recognized when enacting the WPPDA, there is something of an internal inconsistency in a plan which at once sets out certain benefits which covered employees will receive upon retirement and at the same time contains no assurances either that the fund will be in existence when those employees retire or that it will have sufficient assets to pay promised benefits. (S. Rep., *supra*, at 4140).[11] Thus, a statute, such as the Minnesota one here at issue or the federal Pension Reform Act of 1974, which requires employers to assure in some fashion that upon termination of a pension plan the benefits promised will be paid is not really "changing" an agreement; it is, rather, nullifying unfair disclaimers in an agreement which otherwise appears affirmatively to promise

[11] Further, Congress noted that "collectively bargained agreements * * * are for short periods—usually from 1 to 5 years—and the employees whose rights do not mature within such contract period must rely upon the expectation that the union will be able to renew the contract or negotiate a similar one upon its termination." (S. Rep., *supra*, at 4144). Thus, Congress intentionally drew no line at all between collectively bargained plans and other plans in the WPPDA, either with regard to the disclosure role of the federal government or with regard to the state regulatory function.

benefits and providing a means for assuring that the benefits are in fact paid.[12] While the statute does regulate the agreement by prescribing which of several seemingly inconsistent provisions is to be effective, it does not "change" the agreement in the sense of creating obligations never undertaken at all.[13] Thus, contrary to the apparent impression of the court below, the Minnesota pension act is one which creates a "duty * * * affecting the operation or administration of employee * * * pension benefit plans"—namely, the duty to follow through upon promises apparently made by keeping the plan in operation and to refrain from relying upon unfair disclaimers to abnegate those promises by terminating the plan.

The Court of Appeals made an even more fundamental error when it concluded that:

> "neither this language nor statutory history suggests that Congress intended to regulate substantive provisions, performance of, or the funding of any employee benefit plan *or to authorize such regulation by the states.*" (Pet. App. 21, emphasis supplied.)

For, as the foregoing explanation of the WPPDA makes clear, while Congress did not intend *Federal* substantive

[12] The record in this case demonstrates that plan beneficiaries believed they had been promised benefits and detrimentally relied on that perceived promise. (App. 58, 62, 67, 71, 74).

[13] The Court of Appeals' perception that the agreement was "changed" may well have been influenced by the timing of the statute as it affected the White Motor Corporation pension plan: termination as of May 1, 1974 was already expected when the statute was enacted. As we develop in Part II of our argument, we do not believe that this sequence has any significance with regard to the effect of the WPPDA's permission to the states to regulate pension plans; as we note there, however, it is our position that considerations of timing are critical when the states act on their own and not pursuant to a Congressional permission.

regulation, a prime rationale underlying "the limited purpose of this legislation and * * * the (decision) not to affect substantive terms of employee benefit plans" (Pet. App. 21) was precisely the understanding that states *would* continue and expand such regulation, and that in doing so would be aided by the disclosure mandated by the Act.[14] Thus, the fact that the federal legislation was limited is not at all an indication that the permission to the states was also narrow; rather, the federal role was kept narrow in the hope that the states' activity protecting beneficiaries of employee pension plans would expand.

In short, applying the preemption principles stated above, and viewing the WPPDA against the background provided by the series of enactments already reviewed, we submit that while the Congressional intent as regards the extent of substantive state regulation is perhaps less clear than in the other federal statutes discussed earlier, on balance we believe the District Court was correct in concluding that the Congress intended to permit Minnesota to regulate provision terminations as it did, and that the Court of Appeals contrary conclusion was in error.

[14] Indeed, the attempt of the Court of Appeals to create a direct parallel between that which Congress undertook to do and that which the states were expected to do is based in part on the failure to recognize that even the limited substantive regulation in the Senate committee bill—that which provided "severe criminal sanctions for willful, false statements, the destruction of records, embezzlement, kick-backs, and other self-dealing"— (S. Rep., *supra*, 4157, quoted at Pet. App. 23). was not included in the final Act as passed in 1958. (See Pub. L. 85-836, 72 Stat. 997 *et seq.*). Criminal sanctions were added only in amendments to the Act passed in 1962. (See Pub. L. 87-420, 76 Stat. 34, 41-43). That Congress could not possibly have intended in 1958 to insulate from state prosecution the acts it determined not to make federal crimes is yet another indication that the area left to the states was much broader than the disclosure area Congress determined to federalize.

II. If this Court disagrees with our assessment of the impact of the WPPDA on this case, it will be constrained to approach directly the preemption problem presented here without the aid of specific Congressional indicia of intent. Even in that situation, however, there is no need to explore the broadest implications of *Oliver*. For, at the very least, *Oliver* holds—and there are compelling reasons for the holding—that in the absence of some Congressional indication to the contrary, the states may not alter at all the terms of existing collective agreements on mandatory subjects of bargaining.

That there is an important difference, in terms of conflict with basic NLRA presumptions, between state laws which serve as a backdrop to negotiations and those which have the effect of declaring a part of an agreement unlawful in mid-term can be seen from this case. Here, the statute resulting in a large financial liability was enacted only weeks before the collective agreement terminated.[15] The parties had no opportunity to take the potential liability into consideration when the bargain was struck, and it is possible that various provisions in the final agreement would have been very different had that liability been contemplated. Surely, this case would have had another cast had the state statute been in effect when the collective agreement was entered into. In that situation, the parties could have treated against the background of state law, taking the potential liability into account; while the resulting agreement would then be

[15] Petitioner's constitutional causes of action, which will remain in this case if the Court were to hold that the state law is not preempted (see Pet. App. 32-33), focus upon the questions raised by the timing of the state legislation.

greatly affected by state law, it at least would not be twisted fundamentally out of shape by a state enactment.

It is true, of course, that *federal* statutes can, and sometimes do, affect the substantive terms of collective agreements after they are negotiated. But experience demonstrates that the Congress can be expected, in establishing substantive regulations of the employment relationship, to take into account the effect upon federal labor policy; for example, federal statutes do sometimes contain a special delayed effective date where there are applicable collective agreements. (See, e.g., Section 4 of the Equal Pay Act of 1963.) The states, however, have no special responsibility for assuring the integrity of the bargaining process, and are unlikely to question the destructive effect of substantive regulation of existing agreements upon bargaining relationships and to balance that effect against the strength of the public policy furthered by the state regulation.

Thus, whatever question there may arise concerning *Oliver's* general application to protective state laws setting minimum employment standards, the precepts of that case must prevail when the state has legislated in a way that alters existing collective agreements. While we believe that the WPPDA is a sufficient indication of a Congressional intent to suspend operation of this rule, the judgment below should be affirmed on the narrower ground presented here if the Court disagrees with us as to the WPPDA's meaning.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be reversed on the ground that the Welfare and Pension Plan Disclosure Act sanctions the Minnesota

law at issue here and the case remanded for determination of the constitutional issues. In the alternative, if the Court concludes that the WPPDA does not have such an effect, the judgment should be affirmed on the ground that in the absence of a contrary Congressional intent, statutes such as the one at issue here may not, consistent with the Supremacy Clause affect existing collective agreements.

Respectfully submitted,

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In The
Supreme Court of the United States
October Term, 1977

No. 76-1184

E. I. Malone, Commissioner of Labor and Industry for Minnesota,
Appellant,
v.
White Motor Corporation and White Farm Equipment Company,
Appellees.

On Appeal from the United States Court of Appeals for the Eighth Circuit

MOTION OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA FOR LEAVE TO FILE A BRIEF *AMICUS CURIAE* AND BRIEF *AMICUS CURIAE* OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA

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MOTION OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA FOR LEAVE TO FILE A BRIEF *AMICUS CURIAE*

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

The Chamber of Commerce of the United States respectfully moves this Court, pursuant to Supreme Court Rule 42(3) for leave to file the accompanying

brief in this case as *amicus curiae* urging affirmance of the decision of the Court of Appeals. In support of this motion, the Chamber shows as follows:

1. This motion is necessitated by the refusal of the appellant to consent to the filing of a brief by the Chamber as *amicus curiae*.

2. The Chamber of Commerce of the United States of America is a federation consisting of a membership of over 3,700 state and local chambers of commerce and trade and professional associations, and a direct business membership in excess of 65,000. It is the largest association of business and professional organizations in the United States.

The Chamber regularly represents the interests of its member-employers in important labor relations matters vitally affecting those interests before the courts, the United States Congress, the Executive Branch and independent regulatory agencies of the federal government. Such representation constitutes a significant aspect of the Chamber's activities. Accordingly, the Chamber has sought to advance those interests in a wide spectrum of labor relations litigation.[1]

[1] *E.g., Buffalo Forge Co.* v. *United Steelworkers of America,* 428 U.S. 397 (1976); *Connell Construction Co.* v. *Plumbers and Steamfitters Local Union No. 100,* 421 U.S. 616 (1975); *Gateway Coal Co.* v. *United Mine Workers of America,* 414 U.S. 368 (1974); *William E. Arnold Co.* v. *Carpenters District Council of Jacksonville,* 417 U.S. 12 (1974); *Alexander* v. *Gardner-Denver Co.,* 415 U.S. 36 (1974); *Super Tire Engineering Co.* v. *Lloyd W. McCorkle,* 416 U.S. 115 (1974); *N.L.R.B.* v. *Bell Aerospace Co. Division of Textron, Inc.,* 416 U.S. 267 (1974); *Boys Markets* v. *Retail Clerks Union,* 398 U.S. 235 (1970); *N.L.R.B.* v. *Granite State Joint Board,* 409 U.S. 213 (1972); *N.L.R.B.* v. *Pittsburgh Plate Glass Co.,* 404 U.S. 157 (1971); *Booster Lodge No. 405, International Association of Machinists* v. *N.L.R.B.,* 412 U.S. 84 (1973).

3. The specific question presented by this case is whether the Court of Appeals for the Eighth Circuit correctly concluded that the federal labor policy encouraging free collective bargaining and embodied in the National Labor Relations Act (29 U.S.C. § 151, *et seq.*), preempts the Minnesota Private Pension Benefits Protection Act, Minn. Stat. §§ 181B.01-.17. The Minnesota Act mandates vested pension benefits for certain employees and full funding thereof even though their employer and union representative have bargained different benefits and certain limitations on the employer's liability for funding. The instant case thus presents a potential for a novel judicial precedent allowing states to legislate terms and conditions of employment over which employers and unions must otherwise bargain. Many members of the Chamber now bargain with unions; others may do so in the future. As such, they have an obvious concern with whether state legislatures may invalidate or substantively add to or detract from their bargained agreements. Further, they have similar concerns with whether state legislatures may mandate minimum or maximum employment conditions which will restrict the ability of employers and unions to determine those conditions which best meet the needs and desires of their employees; for, in addition to desiring conditions which will attract and retain a productive workforce, employers need the flexibility to meet employee desires in order to avoid strikes.

4. Accordingly, the instant case could create serious labor problems for Chamber members and could result in substantially increased employer costs for employment above those negotiated with unions if the Eighth Circuit's decision is not affirmed.

WHEREFORE, it is respectfully moved and requested that the Chamber of Commerce of the United States of America be granted leave to file the accompanying brief as *amicus curiae*.

Respectfully submitted,

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IN THE
Supreme Court of the United States
OCTOBER TERM, 1977

No. 76-1184

E. I. MALONE, COMMISSIONER OF LABOR AND INDUSTRY FOR MINNESOTA,
Appellant,

v.

WHITE MOTOR CORPORATION AND WHITE FARM EQUIPMENT COMPANY,
Appellees.

On Appeal from the United States Court of Appeals for the Eighth Circuit

BRIEF *AMICUS CURIAE* OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA

INTEREST OF THE *AMICUS CURIAE*

A statement describing the Chamber of Commerce of the United States of America and its interest in

this case is set forth in the preceding motion requesting leave to file this *amicus curiae* brief.

SUMMARY OF ARGUMENT

The issue in this case is whether the federal policy favoring free collective bargaining preempts the authority of the various states to legislate on those subjects where the federal law requires bargaining—*i.e.*, wages, hours and conditions of employment. For the reasons set forth below, we believe the answer is "yes," that the states are so preempted generally and further that state legislation concerning the terms of pension plans (such as the Minnesota statute involved in this case) is likewise preempted because no reason exists to except pensions from the general rule.

Our discussion below is divided into two parts. First, because we believe that the Appellees have fully and accurately set forth the applicable statutory law and judicial precedent, we state briefly what we submit are the salient legal principles involved in this case. The second portion of this brief discusses why broad federal preemption of state laws affecting mandatory collective bargaining subjects makes sense in both theory and practice and, thus, why the arguments of the State and the National Labor Relations Board [2] should be rejected.[3]

[2] The Board has filed a brief *amicus curiae* through the office of the Solicitor General, on behalf of the United States (hereinafter referred to as the "Board's Brief").

[3] This latter discussion is prompted in part by the State's expressed concern that the Eighth Circuit Court of Appeals did not analyze how the Minnesota law in issue interfered with bargaining or the substantive terms of a negotiated agreement (State's Brief at 24) and also by the Labor Board's apparent conclusion that state legislation of minimum employment standards does not substantially interfere with bargaining (Board's Brief at 9, 19-20).

ARGUMENT

A. Federal Labor Policy Favoring Free Collective Bargaining Generally Preempts State Legislation Dealing With Subjects Which Must Be Bargained Between Employers And Unions And Specifically Preempts The Minnesota Pension Act.

The general rule is that states may not intrude upon the federal policy favoring free collective bargaining by enacting statutes which establish minimum or maximum conditions of employment and, hence, limit the scope of bargaining. Thus, the overall scheme of the National Labor Relations Act is to provide the parties to bargaining with the freedom to bargain over employment terms and conditions and to thereby preclude the government (federal and state) from determining what those terms and conditions shall be (*e.g.*, *Local 76, International Association of Machinists and Aerospace Workers* v. *Wisconsin Employment Relations Comm'n.*, 427 U.S. 132 (1976); *H. K. Porter Co.* v. *N.L.R.B.*, 397 U.S. 99 (1970); *N.L.R.B.* v. *Insurance Agents' International Union*, 361 U.S. 477 (1960); *Local 24 of International Brotherhood of Teamsters* v. *Oliver*, 358 U.S. 283 (1959); *Hill* v. *Florida*, 325 U.S. 538 (1945)).

Indeed, in *Machinists*, *supra*, this Court started with that as a settled rule of law (established earlier in *Oliver*, *supra*, and *Insurance Agents'*, *supra*), and proceeded from there to find that states were preempted from controlling the economic weapons avail-

able to bargainers because to allow such control would allow the states to indirectly influence the substantive terms upon which the parties might ultimately agree. If states cannot indirectly control the substance of bargaining, certainly they cannot directly control it.[4]

As with any general rule, however, there are exceptions—*i.e.*, areas where states may legislate notwithstanding the federal labor policy.[5] Although they may not be always separable, for ease of analysis we discuss below three separate exceptions urged by the State and Board.

First, states are not precluded from regulating in the area of labor relations where the regulated conduct touches "interests so deeply rooted in local feeling and responsibility that . . . we could not infer that

[4] The State argues that federal labor policy essentially precludes state interference with the "process" of bargaining rather than the substantive terms of a bargained agreement (*e.g.*, State's Brief at 16, 18). However, *Machinists, supra*, makes clear that such an argument must fail.

[5] In this brief we do not deal with the so-called *Garmon* areas of NLRB primary jurisdiction (those matters which are arguably protected or prohibited by the NLRA) (*San Diego Building Trades Council* v. *Garmon*, 359 U.S. 236 (1959)). As in *Machinists*, the *Garmon* analysis is not relevant here, for the Minnesota Pension Act does not touch upon conduct prohibited or protected by the NLRB. Rather, the relevant area of inquiry in this case is whether pension benefits, a mandatory subject of bargaining, were intended by Congress to be left unregulated and under the control only of the parties in bargaining (*Machinists, supra* at 140). The State's argument (State's Brief at 17-19) that any matter not arguably protected or prohibited is "peripheral" to the central aim of the NLRA, and thus not preempted, has therefore been foreclosed by *Machinists, supra*.

Congress had deprived the States of the power to act." (*Machinists, supra* at 136 (quoting *Garmon, supra* note 5, at 244)). The State and the Board attempt to argue that this exception may apply in this case, for the State of Minnesota has merely exercised its traditional police power to prescribe minimum standards for the welfare of its citizens.[6]

It is sufficient to point out, however, as did this Court in *Machinists*, that this exception applies to the normal police powers of the state in the handling of labor violence, mass picketing, intimidation, blocking of ingress and egress, etc. (*Machinists, supra* at 136, n. 2). The exception clearly does not include the right of states to legislate employment conditions, even when such legislation may be an attempt to promote the general health and welfare of the state's population.[7] Indeed, if this exception in-

[6] *E.g.*, State's Brief at 15, 40-44; Board's Brief at 9, 10-12, 16-17.

[7] For example, even where the general welfare of the entire population is at stake, state legislation prohibiting strikes of public utilities or hospitals is preempted by the national labor policy protecting the right to strike (*Amalgamated Association of Street, Electric Railway and Motor Coach Employees* v. *Wisconsin Employment Relations Bd.*, 340 U.S. 383 (1951); *N.L.R.B.* v. *Committee of Interns*, —— F.2d ——, 96 LRRM 2342 (2d Cir. 1977)). And if this Court was correct in *Machinists, supra*, when it held that the weapons of bargainers (*e.g.*, strikes) could not be controlled by a state because that would lead to indirect control of the substance of bargaining, then *a fortiori* no state may directly control bargaining subjects under the guise of exercising its police power in the interests of health and welfare of its citizens, unless, of course, as we have indicated, such control falls within the exception for "interests . . . deeply rooted in local feeling and responsi-

cluded that right, the exception would swallow the rule. For all manner of state regulation of wages, hours, and other terms and conditions of employment could be justified under the state's authority to enact general welfare legislation.

The second exception allowing states to legislate on matters which might otherwise be preempted by the federal labor policy favoring bargaining is that which allows the states the "power to regulate where the activity regulated [is] a merely peripheral concern of the Labor Management Relations Act." (*Machinists, supra* at 137 (citing *Garmon, supra* note 5, at 243)).[9]

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bility . . . ." Examples of such interests may be specific health and safety matters in the workplace (*e.g., Oliver, supra* at 297), although even here the impact on bargaining subjects may be slight for the question of who shall pay the cost of safety equipment may remain open for bargaining (*see, e.g., Budd Co.* v. *Occupational Safety & Health Rev. Comm'n.*, 513 F.2d 201 (3d Cir. 1975). In any event, this latter category of "interests" certainly does not include pensions.

[9] It is not clear that the Board argues this exception here. The Board quotes from the District Court opinion to the effect that the Minnesota Act did not "regulate conduct so plainly within the central aim of federal regulation . . ." (Board's Brief at 6), but it does not appear that the Board adopts that argument. The Board at page 16, footnote 15 of its brief does cite cases for the proposition that the creation of pension trusts, the interpretation of trust language and the administration of such trusts are matters of peripheral concern to the NLRA. However, those cases do not deal with state mandated benefits and thus are not relevant to the issue now before this Court.

The State, however, does make this peripheral concern argument. First, it contends that unprotected and unprohibited activities are peripheral to the NLRA scheme. That argument must fail (*see* note 5, *supra*). Next, the State seems to argue that because its statute only affects pension benefits when an employer goes out of business or terminates its pension plan, the statute merely regulates matters of peripheral concern to the Labor Act (*e.g.*, State's Brief at 18-19, 21-22). This argument has no validity, for it makes no difference whether benefits are payable prior to or upon termination of employment. The employer is still obligated to bargain with respect to such benefits. Matters such as severance pay and retirement benefits are not only mandatory bargaining subjects, but also standard items in the usual collective bargaining contract (*Wiley & Sons* v. *Livingston*, 376 U.S. 543, 554 (1964); *Inland Steel Co.* v. *N.L.R.B.*, 170 F.2d 247 (7th Cir. 1948), *cert. denied*, 336 U.S. 960 (1949); *N.L.R.B.* v. *Royal Plating and Polishing Co.*, 350 F.2d 191, 196 (3d Cir. 1965)). Pressed to its logical conclusion, the State's argument would make all of these matters subject to state regulation because they all are connected with termination of employment and, therefore, under the State's theory, would be deemed peripheral.

However, this exception does not apply to the issue before this Court. Thus, pensions and the various provisions of a pension plan are clearly mandatory bargaining subjects under the NLRA (*Inland Steel, supra* note 8). As such, pension plans and benefits and their terms cannot in any sense be peripheral to the concerns of federal labor policy, for they are the direct concern of that policy which requires free and unfettered bargaining as to those very matters. Pension plans and benefits fall as plainly within the NLRA bargaining policy as do lease agreements entered into by truck drivers which set forth a union negotiated minimum rental intended to protect negotiated wage rates. The latter are not peripheral to the concerns of the Labor Act because they are mandatory bargaining subjects (*Oliver*,

supra). Then certainly pensions and their various provisions cannot be of peripheral concern.[9]

In sum, the first two exceptions do not allow states to set maximum or minimum levels on mandatory bargaining subjects such as pensions.[10] To the extent that these subjects may be controlled, it must be through the third exception to the doctrine of federal labor policy preemption.

The third exception to the general rule of preemption, and indeed, the only one granting states the right to legislate wages, hours or conditions of employment (other than perhaps health and safety conditions), allows the states to legislate on mandatory bargaining subjects when Congress has granted them the right to do so. Thus, this Court in *Algoma Plywood & Veneer Co.* v. *Wisconsin Employment Relations Bd.*, 336 U.S. 301, 312 (1949) indicated that although the general rule of federal preemption

[9] Significantly, this Court in *Machinists* set forth examples of matters of peripheral concern, none of which dealt with mandatory bargaining subjects (427 U.S. at 137, n. 3).

[10] Justice Powell's concurring opinion in *Machinists* (427 U.S. at 156) reflects that view. He reads the Court's opinion as not precluding "the States from enforcing, in the context of a labor dispute, 'neutral' state statutes or rules of decision: state laws that are not directed toward altering the bargaining positions of employers or unions but which may have an incidental effect on relative bargaining strength . . . for example, their law of torts or of contracts, and other laws reflecting neutral public policy." The Minnesota Pension Act, however, is not a "neutral" state statute having only an incidental effect on relative bargaining strength. Instead, it directly impinges on the substantive aspects of the sort of pension plan to which unions and employers may agree.

required that Congress "manifest an unambiguous purpose" that state law be supplanted, a different approach was required under the NLRA because Congress, by guaranteeing free collective bargaining, foreclosed the states from interfering with the subjects of bargaining. This Court clearly reaffirmed that approach in *Oliver*, *supra* at 297: "If there is to be this sort of limitation [the Ohio antitrust statute] on the arrangements that unions and employers may make with regard to these subjects [wages and truck rental fees], pursuant to the collective bargaining provisions of the Wagner and Taft-Hartley Acts, it is for Congress, not the States, to provide it." *See also*, *id.* at 296 & n. 10.[11]

The Board argues just the opposite on this issue, that is that states have the existing right to legislate minimum employment standards unless Congress has specifically displaced that right.[12] The Board states,

[11] As this Court said in *Amalgamated*, *supra* note 7, at 397-98:

> [C]ongress demonstrated that it knew how to cede jurisdiction to the states. Congress knew full well that its labor legislation "preempts the field that the act covers in so far as commerce within the meaning of the act is concerned" and demonstrated its ability to spell out with particularity those areas in which it desired state regulation to be operative. This Court, in the exercise of its judicial function, must take the comprehensive and valid federal legislation as enacted and declare invalid state regulation which impinges on that legislation. (Footnotes omitted).

[12] *E.g.*, Board's Brief at 9 (the Disclosure Act of 1958 "reserved to the states the responsibility for regulating the operations of pension plans"); at 10 ("an 'intention of Congress to exclude States from exerting their police power must be

for instance, that because "Congress, in enacting the NLRA, made no effort to set minimum standards for the health, safety or welfare of employees; there is thus no basis for inferring that Congress has displaced the state's preexisting authority to do so." (Board's Brief at 11, n. 10).[13] The Board's position again overargues the case.

Thus, the NLRA sets no minimum standards in any areas where bargaining is required and, indeed, does not mention any specific bargaining subjects.

clearly manifested' "); at 12 ("Congress intended that matters of pension regulation be left to the states"); at 16 ("clearly manifested" again); at 17 ("Congress intended to preserve the power of the states to regulate pension plans").

[13] The Board's statement seems at odds with earlier arguments it has presented to this Court. Thus, in its brief on behalf of the United States in *Amalgamated, supra* note 7, the Board stated at 49-50:

> Had Congress intended to permit the states to apply to industries within their borders measures which it had rejected it would clearly have provided for reservation of such power to the states. Congress realized that "by the Labor Act Congress preempts the field that the act covers insofar as commerce within the meaning of the act is concerned" (H. Rep. No. 245, on H.R. 3020, p. 44), and consequently it took care to preserve to the states whatever jurisdiction it desired to permit them to retain. See Section 10(a). Section 14(b), which expressly reserves to the states power to prohibit the execution or application of agreements requiring membership in a labor organization as a condition of employment, was enacted because Congress believed that such a "special provision" was necessary "to give to the States a concurrent jurisdiction in respect of closed-shop and other union-security arrangements" (H. Rep. No. 245, on H.R. 3020, 80th Cong., 1st Sess., p. 40).

But Congress' failure to mention specific subjects, including pensions, has not deterred the Board and courts from determining that pensions must be bargained (*e.g., Inland Steel, supra* note 8) or that the states may not regulate in those areas absent authorization by Congress (*e.g., Machinists, supra*). Further, if the Board is correct and the states have a general right to legislate terms of employment under their general preexisting powers, then the exception again engulfs the rule.[14]

The State, however, argues that Congress expressed an intent to allow the states to control the substance of pension plans via its enactment of the Welfare and Pension Plan Disclosure Act of 1958 (72 Stat. 997) and that this intent was made clear in the legislative history surrounding the enactment of ERISA (29 U.S.C. §§ 1001, *et seq.*).[15]

[14] The Board tries to deal with this problem by contending that the states may set minimum standards—but not maximums—for that will leave the parties free to bargain above those minimums. (*E.g.*, Board's Brief at 19). However, if the states have the power to legislate minimums in the interests of public welfare, they must have the right to legislate maximums in the public interest. Further, even legislation of minimums in some areas of bargaining must have a restrictive influence on other areas. For example, if a state legislated minimum four week vacations for all employees, employers may not be able to afford free lunches, long coffee breaks or increased wages which employees might rather have. Thus, the legislation of "minimum" standards impermissibly interferes with the ability of unions and employers to freely order their own terms of employment—and such an interference is contrary to the national policy in favor of free collective bargaining (*See* our discussion, *infra*).

[15] State's Brief at 15, 29-39.

We would add but three comments to the Appellees' discussion of this issue,[16] which we believe demonstrates there was no such congressional intent.

First, just as the general preemption rule requires Congress to "manifest an unambiguous purpose" that state law be preempted (*Algoma, supra* at 312; *Oliver, supra* at 297), so too, where Congress has generally preempted the field of state regulation over collective bargaining subjects, as it has under the NLRA, it must clearly state an unambiguous intent to reopen any portion of that field for state regulation (*Amalgamated, supra* note 7, at 397-98). We submit that neither the State nor the Board has shown such an unambiguous congressional intent in the pension area.[17]

Second, if Congress intended control of substantive pension terms to be left to the states, then even state law setting maximum limits on benefits or even outlawing privately bargained pension plans would not be preempted by federal labor policy. We submit that Congress never evidenced any such intent.

Finally, the State argues that the enactment of ERISA, which sets certain minimum substantive standards for pensions, establishes that Congress sees

[16] Appellee's Brief, *Argument*, IV at 32-40.

[17] Compare the State's arguments under the WPPDA with specific congressional determinations in favor of state control of bargaining subjects under 29 U.S.C. § 164(b) (allowing state "right to work" laws), 29 U.S.C. § 218 (granting states the right to set higher minimum wages and lower maximum hours of work per week than those established under the Fair Labor Standards Act) and 29 U.S.C. § 667 (allowing states to deal with occupational safety and health matters).

no tension between such legislation (including the Minnesota law) and the national policy of free collective bargaining (State's Brief at 35-39). On the contrary, it is far more reasonable to conclude that Congress saw the tension but enacted ERISA anyway because it felt the need to protect employee pensions. Further, even if Congress' action did indicate its belief that it could enact pension legislation with only minimal impact on the policy of free bargaining, that does not mean that the states were free to try their own hands at drafting such legislation, particularly where, as here, the state statute antedated the pertinent federal statute (ERISA).[18]

In sum, the Minnesota law is preempted by the national policy favoring free and unfettered collective bargaining. Not only is that conclusion supported by the case law, but also, as we show below, there are sound policy and practical reasons why this Court should continue to support a broad preemption of state laws which seek to control subjects over which employers and unions must bargain—wages, hours and conditions of employment.

[18] *See Connell, supra* note 1 at 636, where the Court held that although federal antitrust statutes could stand with the federal labor policy, similar state laws could not. This holding, based upon a possible failure of states to fully appreciate and accommodate the need for a delicate balance between labor and antitrust policy, is particularly relevant in the pension field where ERISA was enacted by Congress with a similar delicate balance between labor policy and pension policy in mind (Subcommittee on Labor of the Senate Committee on Labor and Public Welfare, Legislative History of the Employee Retirement Income Security Act of 1974 (Three Volumes, 1976) ("ERISA Leg. Hist."), Vol. III at 4707).

B. Sound Practical And Policy Considerations Support The Conclusion That Federal Labor Policy Preempts State Regulation Of Mandatory Bargaining Subjects, Including Pensions.

We have attempted to show above that the several states are not generally free to legislate specific terms and conditions of employment (including pension terms) for employees within their states, for to hold otherwise would thwart the national policy in favor of free collective bargaining. We summarize below why that policy developed and why it is important to this nation in general, and bargaining employers and unions specifically.[19]

Congress enacted the National Labor Relations Act in an effort to control the disruptive effects on commerce of strikes resulting from employee unrest. The basic theory, which years of experience have proven to be correct, is that if employees have a "say" in their own wages, hours and working conditions, and at the same time have the power to make that "say" meaningful through the collective power to withhold their labor, there will be less employee frustration and unrest, and thus, fewer strikes and commercial disruptions will occur (*e.g.*, *Amalgamated*, *supra* note 7, at 397). In order for that theory to continue to work in practice, it is essential that the parties to bargaining be left as free as possible to work out employment terms which make sense to them. Thus, our national policy in favor of free and unfettered private bargaining has worked well

[19] Policy considerations and practical experience have played an important role in this Court's consideration of preemption issues (*Amalgamated Association of Street, Electric Railway and Motor Coach Employees* v. *Lockridge*, 403 U.S. 274, 291 (1971).

because governments (both state and federal) have not generally played a role in setting or regulating substantive employment terms.

The State and Board seem to argue, however, that the extent to which Minnesota law impacts on bargaining is slight and, accordingly, should not be preempted by federal labor policy. Thus, the State argues that its law merely requires an employer to pay retirement benefits, and then only at the end of employment (State's Brief at 18-19). The Board argues that the State law has merely set minimum standards which do not disrupt bargaining much because parties are free to bargain above those minimums (Board's Brief at 19). Both arguments take a piecemeal approach to the bargaining process and thus ignore the basic nature of bargaining, *i.e.*, bargaining is a series of trades. Bargainers come to the table with many demands and proposals, normally with no realistic expectation of gaining all they demand. Wage demands are decreased in exchange for pension coverage, the demand for more paid vacation time is reduced to pay for more holidays, shift premium pay is cut back in exchange for increased coffee breaks, ets. Accordingly, to isolate one benefit and mandate a minimum payment is unrealistic, for that mandated payment must come from some other benefit or wage proposal.[20]

[20] The positions of the State and Board must assume that employers have infinite financial resources and that, accordingly, the cost of legislated minimum standards in one area will not result in decreases in other employment terms or benefits. That is not the case generally and most certainly was not true in the case of White which closed its plant after losses of $21 million over a three-year period (Appendix, p. 27).

Perhaps the best way to illustrate the lack of soundness in the piecemeal approach is to assume that the Minnesota law had been in effect prior to White's predecessor's first agreement upon a pension plan. This approach, of course, eliminates from consideration the appalling interference with the agreement negotiated between the UAW and White resulting in an increased cost to White of over $19 million above its bargain, but it does illustrate the impact of the Minnesota law upon bargaining.[21]

If the law had been in effect in 1950, would White's predecessor have established a pension in the first place? Certainly the costs would have been greater than they were, for to avoid liability that plan would have had to be fully funded. If a fully funded plan had been agreed upon, what effect would that have had on other employee benefits? Would employees have received less wages, shorter vacations, fewer holidays, etc.? The UAW may have preferred a plan funded over a longer period of time in order to reduce costs and, thus, secure higher hourly wages—but the state statute would have foreclosed, or at least interfered with, that option. Thus, the union and White's employees could have been faced with an all or nothing choice—accept an expensive fully funded pension and lower wages or receive higher pay but no pension. It is at least possible, if not likely, that the employees

[21] Because the Minnesota law may now be preempted by ERISA, the consequences set forth above may not occur in the future, but they do illustrate the unrealistic nature of the State's and Board's analysis.

would have opted for no pension at all,[22] in which case White and the State would never have become involved in the litigation now before this Court.

These examples can be multiplied, producing endless permutations and tradeoffs. But the point is clear, no one benefit exists in a vacuum, so that a legislated minimum on one term of employment affects all others being bargained and may even result in no agreement on the benefit to which the minimum standard applies. Just as the power to tax involves the power to destroy, so also the power to set minimum employment standards on only one bargaining subject involves the power to regulate bargaining on all terms and conditions of employment.[23] In sum, the word "minimum" is no magic talisman.

Further, the rationale of the Board and State cannot be limited to authorizing state legislation of minimum standards only. Thus, if a state, in the interest

[22] The House Ways and Means Committee pointed out in its report on ERISA legislation that the willingness of "those employees who are covered under a collective bargaining agreement [to] choose nonpension benefits, or nonpension benefits plus pension benefits at a lower level than those provided nonunion employees" had actually created a problem in establishing pension plans for nonunion employees (ERISA Leg. Hist., Vol. II at 3168).

[23] States have been denied the power to control the economic weapons of bargainers because that control may have an indirect impact on the substantive terms of a resulting agreement (*Machinists, supra*). Accordingly, it is even more certain that the states may not be allowed the power to set minimum substantive standards on even one employment condition, for that will directly affect bargaining on all other conditions.

of public welfare, legislates maximum employment standards, parties would still be free to bargain up to those maximums. For example, a state interested in attracting industry for the betterment of all its citizens might decree a maximum per hour wage rate, thus frustrating the ability of any union or employer to bargain more. And if a state can so act, why not its subdivisions—counties, cities, towns and villages?

In sum, state legislation of minimum or maximum employment standards has to restrict bargaining, all to the detriment of a free collective bargaining system which has well served this nation.

In addition to the foregoing more obvious consequences of a failure to affirm the Eighth Circuit's judgment in this case, a few additional examples reinforce the conclusion that the Circuit Court was correct.

Assume that states are to be granted the right to legislate employment standards and only minimum standards at that. If some states legislate minimum vacations for all employees, minimum paid rest periods, minimum employee workforce sizes, etc., and others do not, it is at least possible that some employers will gravitate to those states less inclined to legislate minimums. Indeed, the Board has earlier informed this Court that to so encourage employers is "contrary to sound economic and social policy" (Brief for the United States as *amicus curiae*, pp. 22-23 in *Linn* v. *United Plant Guard Workers, Local 114*, 383 U.S. 53 (1966).

Further, state legislated minimum standards could have an adverse impact on multi-employer bargaining involving business locations in various states. Normally such bargaining seeks common agreements on all or most bargaining subjects and incorporates those agreements into a common document. Congress and the courts have recognized the value of this common approach, because it achieves industrial peace in one step and avoids the waste of bargaining for the same things in hundreds of individual locations.[24] Further, Congress has recognized that to prohibit such bargaining could create situations where employees in each unit would seek benefits at least equal to those bargaining in all other units, and this leapfrogging could result in "an epidemic of strikes throughout the various units of the industry." [25]

But if the various states are allowed to set varying minimum standards, such bargaining will become more difficult, if not impossible. Thus, although we are dealing in this case with but one intrusion into the bargaining process (pension vesting and funding), minimum standard setting by the fifty states could result in hundreds of different standards nationwide (*e.g.*, vacations, breaks, holidays, parking, grievance procedures, no-strike clauses, management rights clauses, seniority, layoff, leaves of absence, cafeteria food prices, transportation to and from work, shift premiums, etc.). If a multi-employer bargainer dealing with locations in all those states cannot afford to agree to all those benefits in all states, or if the state

[24] *E.g., N.L.R.B.* v. *Truck Drivers Local 449*, 353 U.S. 87, 95 (1957); NLRB, Legislative History of the Labor Management Relations Act, 1947, Vol. I at 468-69, 716-17 (1948) ("LMRA Leg. Hist.").

[25] LMRA Leg. Hist., Vol. I at 468-69.

minimums conflict with one another,[26] tradeoffs state-by-state will have to be made. And the result will be that what had been a single agreement will become a hodge-podge of hundreds of special provisions. Further, the very problem of leapfrogging which concerned the Congress would be built into multi-employer bargaining, for each state minimum could become the bargaining goal in all other states.

There is no need to belabor the point. Failure to affirm the Eighth Circuit's judgment will affect collective bargaining and will restrict the flexibility of the parties to determine the conditions of employment which best meet their needs and desires. Moreover, reversal of the Eighth Circuit may open the door to legislative action on behalf of employees to gain for them what they failed to receive at the bargaining table. Indeed, the Minnesota legislature in this case did just that. Certainly such action erodes confidence in, and thereby inferences with, collective bargaining. Further, in those instances where legislation is enacted, it cannot serve the long-term interests of employees, employers and the nation. For no legislature can mandate minimum employment conditions which will fit the needs of all employers and employees in its state. On the other hand, as we have shown, legislated minimum conditions restrict bargaining flexibility on all bargaining subjects with the result that employees begin to lose the ability to have an effective "say" in the setting of their employment conditions. That, in the judgment of Congress, leads to employee unrest and strikes triggered by frustration—which brings us back to where we started this discussion and where this nation started in 1935 before the Wagner Act was passed.

[26] One state might require employer paid bus transportation to cut down automobile travel and another might require employer paid automobile parking within a five-minute walk of the plant.

CONCLUSION

For all the foregoing reasons, the judgment of the Eighth Circuit Court of Appeals should be affirmed.

Respectfully submitted,

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